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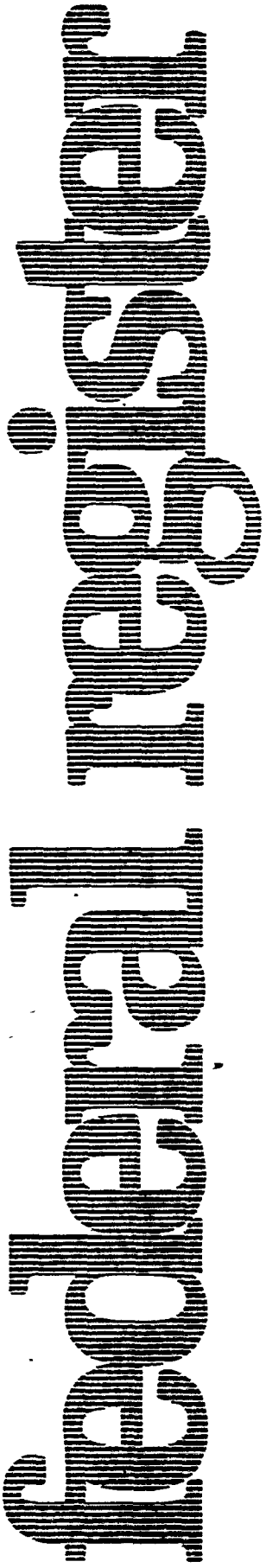

Tuesday
September 9, 1980

Highlights

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Highlights

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 45, No. 176
Tuesday, September 9, 1980

OFFICE OF THE FEDERAL REGISTER

1 CFR Part 51

Final Approval of Incorporation by Reference for Environmental Protection Agency's State Implementation Plans and Amendments

AGENCY: Office of the Federal Register.

ACTION: Final approval of the State implementation plans and amendments for incorporation by reference.

SUMMARY: The Director of the Federal Register published a list of approved material for incorporation by reference on June 30, 1980 (45 FR 44090). At that time, the Director granted an extension until September 1, 1980, for the Environmental Protection Agency's (EPA) request to incorporate by reference the State Implementation Plans and Amendments developed under the Clean Air Act. In today's document, the Director of the Federal Register gives final approval to EPA for incorporation by reference of its State Implementation Plans and Amendments.

EFFECTIVE DATE: Approval is given for one year effective July 1, 1980.

FOR FURTHER INFORMATION CONTACT: Rose Anne Lawson, (202) 523-4534.

SUPPLEMENTARY INFORMATION:

Authority. Each agency that wishes material incorporated by reference in the *Code of Federal Regulations* to remain effective must annually submit to the Director a list of that material and the date of its last revision (1 CFR 51.13).

5 U.S.C. 552(a) and 1 CFR Part 51 provide that material approved for incorporation by reference by the Director of the Federal Register has the same legal status as if it were published in full in the Federal Register.

Availability. Before an agency may incorporate by reference any material into the *Code of Federal Regulations*, it must make the material reasonably available to the class of persons affected by it.

If you have any problems obtaining the material incorporated, please contact the agency. If you find the material is not available, please notify the Director of the Federal Register, National Archives and Records Service, Washington, DC 20408, or call (202) 523-4534.

Approval. The Director of the Federal Register grants final approval to the Environmental Protection Agency to incorporate by reference the State Implementation Plans and Amendments, as listed in the June 30, 1980 table at 45 FR 44102. The material is incorporated into 40 CFR 52.02(d).

Martha B. Girard,

Acting Director of the Federal Register.

[FR Doc. 80-27801 Filed 9-8-80; 8:45 am]

BILLING CODE 1505-02-M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management has amended excepted service regulations which authorize appointments under the Stay-in-School Program, to limit the program to students pursuing an education no higher than the baccalaureate level and performing duties no higher than the GS-4 level or equivalent under the Federal Wage System. The number of hours that students may work and the dates during which no new appointments may be made have also been revised. The revision provides agencies and State Employment Service offices with more defined guidelines and clarifies the original intent of the program.

EFFECTIVE DATE: September 9, 1980.

FOR FURTHER INFORMATION CONTACT: James R. Poole, (202) 632-5677.

SUPPLEMENTARY INFORMATION:

Background

On May 30, 1980, OPM published proposed regulations in the Federal Register (45 FR 36416) which would amend Schedule A authority 213.3102(w), limiting the Stay-in-School Program to students enrolled in undergraduate curricula who are performing duties no higher than the GS-4 level or equivalent under the Federal Wage System. The 60-day period for interested parties to submit written comments ended on July 29, 1980.

Discussion of Comments

Nine written comments were received: three from labor organizations, five from agencies, and one from an individual.

Two of the labor organizations had no comments while the third supported the proposed amendment.

One agency noted that "work of a routine nature up to the GS-4 level" lacked clarity and recommended rephrasing the statement to read: "up to and including the GS-4 level." This wording has been incorporated into the final regulations.

The second agency addressed the number of hours that students may work while in school, and suggested that the hours be increased from 16 to 20 hours per week. Even though the proposed regulations were not intended to alter this aspect of the program, the suggestion has merit and could benefit both students and agencies. The suggestion, therefore, has been made a part of the final regulations.

The third agency also addressed an issue which was not a part of the original proposal. The agency felt that it was too restrictive to prohibit new appointments under this authority between May 1 and August 31, and questioned the time lag between May 1 and May 13, the beginning of the Summer Aid Program. To ensure that agencies participate fully in the Federal Government's summer employment program, the prohibition on making new appointments under this authority during the summer months was not eliminated. However, for the sake of continuity between this program and the Summer Aid Program, we are permitting new appointments of Stay-in-Schoolers until the beginning of the summer employment period. The final regulations reflect a change in this date to May 13.

The fourth agency commented that if students were permitted to work "not to exceed 40 hours" per week during their vacation period, they would be prohibited from working overtime. Stay-in-Schoolers may not routinely work overtime, but we recognize the fact that on a one time or occasional basis it may be necessary to permit a student to work a few additional hours. The regulation has been modified by permitting students to work full time without citing a 40-hour limitation.

The fifth agency and the individual felt that graduate students should be permitted to participate in the program since they, too, require financial assistance and the Federal Government has a continuous need for personnel trained at the post-graduate level. While we agree with the commenters that graduate students may have similar needs and are valuable employees, we are also responsible for protecting and carrying out the original intent of this program. Since there are other student programs and appointing authorities available for graduate students, this suggestion was not adopted.

The Director has found that good cause exists for making this regulation effective on the date of publication, since the majority of appointments under the Stay-in-School Program are made at the beginning of the school year in September. OPM has determined that this is a significant regulation for the purposes of EO 12044.

Office of Personnel Management
Kathryn Anderson Fetzer,
Assistant Issuance System Manager.

Accordingly, the U.S. Office of Personnel Management is revising § 213.3102 (w) to read as follows:

§ 213.3102 Entire Executive Service.

* * * * *

(w) Part-time or intermittent positions, the duties of which involve work of a routine nature up to and including the GS–4 level of difficulty or equivalent under the Federal Wage System, when filled by students appointed in furtherance of the President's Youth Opportunity Stay-in-School Campaign or when filled by mentally retarded or severely physically handicapped students, provided that the following conditions are met:

(1) Appointees are enrolled in or accepted for enrollment as a resident student in a secondary school (or other appropriate school for mentally retarded students) or an institution of higher learning not above the baccalaureate level, accredited by a recognized accrediting body;

(2) Employment does not exceed 20 hours in any calendar week, except that students may work full time during any period in which their school is officially closed.

(3) While employed, appointees continue to maintain an acceptable school standing, although they need not attend school during the summer;

(4) Appointees need the earnings from the employment to continue in school, except that this requirement does not apply to mentally retarded or severely physically handicapped students appointed under the authority; and

(5) Salaries are fixed by the agency head at a level commensurate with the duties assigned and the expected level of performance.

Appointments under this authority may not extend beyond 1 year. *However,* such appointments may be made for additional periods of not to exceed 1 year, each, if the conditions for initial appointment are still met. Students may not be appointed under this authority unless they have reached their 16th birthday. No new appointments may be made between May 13 and August 31, inclusive.

(5 U.S.C. 3301, 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218)

[FR Doc. 80-27727 Filed 9-8-80; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 47

Rules of Practice Under the Perishable Agricultural Commodities Act, 1930

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action will formally delete those provisions contained in 7 CFR Part 47, issued under the Perishable Agricultural Commodities Act, 1930, (7 U.S.C. 499a et seq.), which pertains to disciplinary proceedings for violations of the Act, because they have been superseded by the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary (7 CFR 1.1301.151). The primary purpose of this action is to make the Rules of Practice under the Perishable Agricultural Commodities Act conform with the Rules of Practice prescribed by the Secretary.

EFFECTIVE DATE: September 9 1980.

FOR FURTHER INFORMATION CONTACT: Wilbur A. Rife, Head, License Section, Regulatory Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Phone (202) 447–2189.

SUPPLEMENTARY INFORMATION: In accordance with the administrative procedure provisions in 5 U.S.C. 553, notice is hereby given that the Agricultural Marketing Service, pursuant to authority provided in section 15 of the Perishable Agricultural Commodities Act is deleting §§ 47.26 through 47.45 of the Rules of Practice issued under the Act, which were superseded by the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings instituted by the Secretary under various statutes (7 CFR 1.130–1.151).

The Perishable Agricultural Commodities Act establishes a code of fair trading practices in the marketing of fresh and frozen fruits and vegetables. It provides a means for the enforcement of marketing contracts by providing for the collection of damages from anyone who fails to live up to contractual obligations. All commission merchants, dealers, and brokers dealing in these commodities are required to be licensed. Licenses are the key to the enforcement of the Act, and can be suspended or revoked for violaton of the law.

Sections 3(c), 4(d), 6(c), 8(a), 8(b), 8(c), 9, and 13(a) of the Act authorize opportunities for hearing in connection with suspension or revocation of a license. Relevant regulations were promulgated describing procedures for such hearings when requested. These regulations which were set forth in 7 CFR (47.26 through 47.45) now have been made ineffective by the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings instituted by the Secretary under various statutes (7 CFR 1.130–1.151).

The purpose of these amendments is to delete those sections of the regulations which have been superseded by the Rules of Practice prescribed by the Secretary.

§§ 47.26 through 47.45 [Deleted]

Said regulations (7 CFR 47.26 through 47.45), therefore, are deleted.

Because these amendments codify existing law and deal with rules of internal agency practice, the Department is satisfied that the notice and comment provisions of the Administrative Procedure Act 5 U.S.C. 553(b) do not apply.

Dated: September 4, 1980.

William T. Manley,
Deputy Administrator, Marketing Program Operations.

[FR Doc. 80-27718 Filed 9-8-80; 8:45 am]
BILLING CODE 3410-02-M

Agricultural Stabilization and Conservation Service

7 CFR Part 760

[Amdt. 3]

Indemnity Payment Programs: Beekeeper Indemnity Payment Program (1978-1981)

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to amend the Beekeeper Indemnity Payment Program Regulations to terminate the Beekeeper Indemnity Payment Program on October 9, 1980.

EFFECTIVE DATE: September 9, 1980.

FOR FURTHER INFORMATION CONTACT: Robert Cook, Emergency and Indemnity Programs Division, ASCS, USDA, P.O. Box 2415, 4095 South Building, Washington, D.C. 20013, (202) 447-7997. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This regulation has been reviewed under USDA procedures established in Secretary's Memorandum No. 1955 to implement Executive Order 12044, and has been classified "not significant."

The title and number of the Federal assistance program that this final rule applies to is: Title—Beekeeper Indemnity Payments, NUMBER—10.060 as found in the Catalog of Federal Domestic Assistance Programs.

This action will not have a significant impact on area and community development. Therefore, review as established by OMB Circular A-95, was not used to assure that units of local government are informed of this action.

Section 207 of the Food and Agriculture Act of 1977, 91 Stat. 921, 7 U.S.C. 284, extended the authority of the Secretary to conduct the Beekeeper Indemnity Payment Program through September 30, 1981. On July 14, 1978, the Department published final regulations (43 FR 30264) to govern the conduct of the program through September 30, 1981. It is not mandatory that the program be conducted.

The proposed budget for the Department of Agriculture for fiscal year 1980 contained no funding for the Beekeeper Indemnity Payment Program. The Agriculture Appropriations Act for fiscal year 1980 authorized $2.89 million for the Beekeeper Indemnity Payment Program. The proposed budget for the Department of Agriculture for fiscal year 1981 again requests no funding for the program. The Department has remaining approximately $900,000 to pay an estimated $4.0 million in claims filed after June 15, 1979.

On April 11, 1980, a Notice of Proposed Rulemaking to terminate the Beekeeper Indemnity Payment Program (BIPP) was published in the Federal Register at 45 FR 24899. The proposed termination date was May 15, 1980.

Interested persons were given 20 days or until April 30, 1980, to file comments. Many of the early comments were critical of the short comment period. On May 13, 1980, a second notice was published in the Federal Register at 45 FR 31393 extending the comment period to June 12, 1980, and revising the proposed termination date of the program to July 1, 1980.

A total of 718 written comments were received. Of these, 661 (92 percent) favored continuation of the BIPP, 36 (5 percent) favored termination and 21 (3 percent) did not state whether they favored continuation or termination of the program. The 661 comments favoring continuation of the program included comments from 10 Senators, 15 Congressmen, American Farm Bureau Federation, 4 State farm bureau federations, the National Farmers Union, 53 beekeeper associations, 9 universities and colleges, 9 State departments of agriculture and 13 agribusinesses and associations.

The 36 comments favoring termination of the program included two agribusinesses and one university. The remaining 33 comments appeared to be split about evenly between beekeepers and other interested individuals.

Even though the public comments were strongly in favor or continuing the program, it has been determined that the program should be terminated for the following reasons: (1) No funds were included in the proposed budgets for the Department of Agriculture for the Beekeeper Indemnity Payment Program for fiscal years 1980 and 1981, and; (2) The Beekeeper Indemnity Payment Program was determined under the zero base budgeting process to be a low priority program.

Furthermore, the intent of Congress to terminate the present Beekeeper Indemnity Payment Program was evident when the House of Representatives did not include funding in the proposed appropriations for the Department for the program for fiscal year 1981. Instead, the House recommended that $1.5 million be appropriated for a new experimental Beekeeper Indemnity Payment Program.

Final Rule

Accordingly, the regulations at 7 CFR Part 760, the title of the subpart—Beekeeper Indemnity Payment Program (1978-1981)—and § 760.101(b) are amended to read as set forth below:

Subpart—Beekeeper Indemnity Payment Program (1978-1980)

§ 760.101 Definitions.

* * * * *

(b) "Application period" means any period with respect to which application for payment is made beginning not earlier than January 1, 1978, and ending not later than October 9, 1980.

(Sec. 804, 87 Stat. 1382 (7 U.S.C. 135b note); sec. 1(27), 87 Stat. 237 (7 U.S.C. 135b note); and sec. 207, 91 Stat. 921 (7 U.S.C. 284 note))

Signed at Washington, D.C., on September 3, 1980.

Ray Fitzgerald,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 80-27476 Filed 9-8-80; 8:45 am]

BILLING CODE 3410-05-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

[Rev. 2, Amdt. 13]

Delegations of Authority To Conduct Program Activities in Field Offices

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: SBA is delegating approval authority of Surety Bond Guarantees on contracts not to exceed $1,000,000 to Regional Administrators. Previously, on contracts between $500,000 and $1,000,000, approval action could only be exercised by the Central Office. It is expected that this action will shorten SBA's response time to requests for surety guarantees.

EFFECTIVE DATE: September 9, 1980.

FOR FURTHER INFORMATION CONTACT: Ronald Allen, Paperwork Management Branch, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416, (202) 653-6703.

SUPPLEMENTARY INFORMATION: Because Part 101 consists of rules relating to the Agency's organization and procedures, notice of proposed rulemaking and public participation thereon as prescribed in 5 U.S.C. 553 is not required and this amendment to Part 101 is adopted without resort to those procedures. Accordingly, pursuant to authority contained in Section 5(b)(6) of

the Small Business Act, 15 U.S.C. 634, Part 101, Chapter I, Title 13 of the Code of Federal Regulations is amended as follows:

§ 101.3-2 [Amended]

Section 101.3-2, Part III, Section C, is amended to increase the Regional Administrator's authority as follows:

Section C—Surety Guarantee

1. To guarantee sureties against portion of losses resulting from the breach of bid, payment, or performance bonds on contracts, not to exceed the following amounts:

a. Regional Administrator, $1,000,000

* * * * *

Dated: September 2, 1980.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 80-27526 Filed 9-8-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 368, 369, 370, 372, 377, 385, and 390

Amendments to the Export Administration Regulations To Reflect Legislative and Organizational Changes

AGENCY: Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Act of 1979 took effect on October 1, 1979, upon the expiration of the Export Administration Act of 1969, on September 30, 1979. Department Organization Order 10-3, dated January 2, 1980, abolished the Industry and Trade Administration, the Bureau of Trade Regulation, and the position of Deputy Assistant Secretary for Trade Regulation, and established the International Trade Administration and the position of Deputy Assistant Secretary for Export Administration. This rule amends the Export Administration Regulations to reflect those legislative and organizational changes. This rule also amends the Regulations to correct references to other organizational name and address changes.

EFFECTIVE DATE OF ACTION: September 9, 1980.

FOR FURTHER INFORMATION CONTACT: Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, Washington, D.C. 20230 (telephone: (202) 377-5247 or 377-4811).

SUPPLEMENTARY INFORMATION: Section 13(a) of the Export Administration Act of 1979 ("the Act") exempts regulations promulgated thereunder from the public participation in rulemaking procedures of the Administrative Procedure Act. Section 13(b) of the Act, which expresses the intent of Congress that where practicable "regulations imposing controls on exports" be published in proposed form, is not applicable because these regulations do not impose controls on exports. It has been determined that these regulations are not "significant" within the meaning of Department of Commerce Administrative Order 218-7 (44 FR 2082, January 9, 1979) and Industry and Trade Administration Administrative Instruction 1-6 (44 FR 2093, January 9, 1979) which implement Executive Order 12044 (43 FR 12661, March 23, 1978), "Improving Government Regulations." Therefore these regulations are issued in final form.

Accordingly, the Export Administration Regulations (15 CFR Part 368 *et seq.*) are amended as follows:

PART 368—U.S. IMPORT CERTIFICATE AND DELIVERY VERIFICATION PROCEDURE

1. Section 368.2(a)(4) is amended by revising the introductory paragraph as follows:

§ 368.2 International Import Certificate.

(a) *Procedure.* * * *

(4) *Foreign Excess Property.* Where foreign excess property imported into the United States is involved, a request for certification and validation of an International Import Certificate shall be submitted in triplicate directly to the Office of Export Administration. However, if a request for such certification of Form ITA-645P is made at the same time as Form ITA-302P, application for Foreign Excess Property Import Determination, both forms may be sent together to the Foreign Excess Property Officer, Statutory Import Programs Staff, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, who will refer the Form ITA-645P to the Office of Export Administration for action. A request for an International Import Certificate for foreign excess property requires the following special information:

* * * * *

§ 368.2 [Amended]

2. Section 368.2(a)(5) is amended by deleting the words "Office of Export Control (Attention: 852)" and inserting, in their place, the words "Office of Export Administration."

PART 369—RESTRICTIVE TRADE PRACTICES OR BOYCOTTS

PART 370—EXPORT LICENSING GENERAL POLICY AND RELATED INFORMATION

§§ 369.6 and 370.2 [Amended]

3. 15 CFR Parts 369 and 370 are amended by deleting the words "Bureau of Trade Regulation" and inserting, in their place, the words "International Trade Administration" in the following places:

(a) Section 369.6(b)(4); and

(b) Section 370.2, the definition of the term "Department of Commerce."

§ 369.6 [Amended]

4. Section 369.6(c)(4) is amended by deleting the words "section 3(5) of the Export Administration Act of 1969, as amended" and inserting, in their place, the words " section 3(5) of the Export Administration Act of 1979."

§ 369.8 [Amended]

5. Section 369.8 is amended by deleting the words "Deputy Assistant Secretary for Trade Regulation" and inserting, in their place, the words "Deputy Assistant Secretary for Export Administration" in the following places: Section 369.8 (b)(2); (c); and (f), example (ii).

§ 370.1 [Amended]

6. Section 370.1(b)(1) is amended by deleting the words "Export Administration Act of 1969" and inserting, in their place, the words "Export Administration Act of 1979."

§ 370.2 [Amended]

7. The definition of the term "Export Administration Act" in §370.2 is revised to read as follows:

"Export Administration Act. Export Administration Act of 1979, effective October 1, 1979."

PART 372—INDIVIDUAL VALIDATED LICENSES AND AMENDMENTS

§§ 372.1, 377.1, 377.4, 377.6, 390.1 [Amended]

8. 15 CFR Parts 372, 377 and 390 are amended by deleting the words "Export Administration Act of 1969, as amended" and inserting, in their place, the words "Export Administration Act of 1979" in the following places:

(a) § 372.1(d);

(b) § 377.1(a);

(c) § 377.4(j);

(d) § 377.6 (d)(1)(iii), and (d)(6)(ii)(c); and

(e) § 390.1(l)(1).

§§ 377.5, 377.6, 377.15 [Amended]

9. §§ 377.5(g), 377.6(h) and 377.15(e) are amended by deleting the words "section 7(c) of the Export Administration Act of 1969, as amended" and inserting, in their place, the words "section 12(c) of the Export Administration Act of 1979".

§ 385.2 [Amended]

10. § 385.2(a) is revised as follows:

(a) The Export Administration Act of 1979 states that it is the policy of the United States "to encourage trade with all countries with which the United States has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest." The Act also states that it is the policy of the United States "to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States." Accordingly, and in compliance with other sections of the Export Administration Act of 1979, the Department conducts a continuing review of commodities and technology to assure that prior approval is required for the export or reexport of U.S.-origin commodities and technical data to the U.S.S.R., Albania, Bulgaria, Czechoslovakia, Estonia, German Democratic Republic, Hungary, Laos, Latvia, Lithuania, Mongolian People's Republic, Poland, People's Republic of China, and Romania only if the commodities or technical data have a potential for being used in a manner that would prove detrimental to the national security of the United States. The general policy of the Department, however, is to approve applications or requests to export or reexport such commodities and technical data to these destinations when the Department determines, on a case-by-case basis, that the commodities or technical data are for a civilian use or would otherwise not make a significant contribution to the military potential of the country of destination that would prove detrimental to the national security of the United States.

To permit such policy judgments to be made, each export application and reexport request is reviewed in the light of prevailing policies with full consideration of all relevant aspects of the proposed transaction. The review generally includes an analysis of the kinds and quantities of commodities or technologies to be shipped; their military or civilian uses; the unrestricted availability abroad of the same or comparable items; the country of destination; the ultimate end-users in the country of destination, and the intended end-use. Applications covering certain commodities and technical data that are controlled by the United States and certain other nations that cooperate in an international export control system and are proposed for export or reexport to Country Group P, Q, W, or Y may have to be forwarded to the Coordinating Committee (COCOM) of this international export control system for consideration in accordance with established COCOM procedures. Although each proposed transaction is considered individually, certain goods on the Commodity Control List are more likely to be approved than others. See Supplement No. 1 to this Part 385 for an identification of such goods.

* * * * *

§ 386.3 [Amended]

11. § 386.3(r)(2) is amended by deleting the words "Bureau of International Commerce" and inserting, in their place, the words "International Trade Administration."

§ 390.2 [Amended]

12. § 390.2 is amended by deleting the words "Domestic and International Business Administration" and inserting, in their place, the words "International Trade Administration" in the following places:

§ 390.2(a)(1), (a)(2)(i), (a)(2)(iii), (a)(3), (a)(3)(i), (a)(3)(ii), and (a)(3)(iii).

§ 390.1 [Amended]

13. § 390.1 (a) and (b) are amended by deleting the words "section 5(c) of the Export Administration Act of 1969, as amended" and inserting, in their place, the words "section 5(h) of the Export Administration Act of 1979."

14. § 390.1(h)(3) is revised to read as follows:

§ 390.1 Advisory committees.

* * * * *

(h) * * *

(3) Request for records should be addressed to: International Trade Administration Freedom of Information Officer, Records Inspection Facility, Room 3012, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Telephone 202-377-3031. Rules concerning the use of the Records Inspection Facility are contained in Part 4, Subtitle A, Title 15, Code of Federal Regulations, or may be obtained from the facility.

§ 390.4 [Amended]

15. § 390.4(c) is amended by deleting the words "section 7(c) of the Export Administration Act of 1969" and inserting, in their place, the words "section 12(c) of the Export Administration Act of 1979."

(Secs. 13 and 15, Pub. L. 96-72, to be codified at 50 U.S.C. App. § 2401 *et seq.*; Exec. Ord. No. 12214 (45 FR 29783, May 6, 1980); Dept. Org. Ord. 10-3 (45 FR 6141, January 25, 1980); International Trade Administration Org. and Func. Ord. 41-1 (45 FR 11862, February 22, 1980))

Dated: September 4, 1980.

William V. Skidmore,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 80-27598 Filed 9-8-80; 8:45 am]

BILLING CODE 3510-25-M

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15 CFR Part 371

Export Licensing Requirements for U.S. Civil Aircraft on Temporary Sojourn

AGENCY: Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: General License *GATS* authorizes, subject to certain conditions, the departure from the United States of foreign registered civil aircraft on temporary sojourn in the United States and of U.S. civil aircraft for temporary sojourn abroad. This revision, which neither limits nor expands the provisions of General License *GATS*, is issued to emphasize the inapplicability of General License *GATS* to flights of certain U.S. registered aircraft that depart the United States for destinations in Country Groups P, S, W, Y and Z. Addition of language emphasizing when validated licenses are required for temporary sojourn flights is expected to reduce confusion among aircraft operators who attempt to apply the provisions of General License *GATS* to flights to destinations in Country Groups P, S, W, Y and Z.

EFFECTIVE DATE: September 9, 1980.

FOR FURTHER INFORMATION CONTACT: Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, Washington, D.C. 20230 (Telephone: (202) 377-5247 or 377-4811).

SUPPLEMENTARY INFORMATION: Section 13(a) of the Export Administration Act of 1979 ("the Act") exempts regulations promulgated thereunder from the public participation in rulemaking procedures of the Administrative Procedure Act. Section 13(b) of the Act, which

expresses the intent of Congress that where practicable "regulations imposing controls on exports" be published in proposed form, is not applicable because these regulations do not impose controls on exports. It has been determined that these regulations are not "significant" within the meaning of Department of Commerce Administrative Order 218-7 (44 FR 2082, January 9, 1979) and International Trade Administration Administrative Instruction 1-6 (44 FR 2093, January 9, 1979) which implement Executive Order 12044 (43 FR 12661, March 23, 1978), "Improving Government Regulations." Therefore these regulations are issued in final form.

Accordingly, the Export Administration Regulations (15 CFR Parts 368 *et seq.*) are amended by revising § 371.19(b)(2), reading as follows:

§ 371.19 General License GATS; Aircraft on Temporary Sojourn

* * * * *

(b) * * *

(2) Any other operating civil aircraft of U.S. registry may depart from the United States under its own power for any destination, except Country Groups P, S, W, Y, and Z (flights to these destinations require a validated license): *Provided,* That—

* * * * *

(Secs. 4, 5, 6, 13 and 15, Pub. L. 96-72, to be codified at 50 U.S.C. App. 2401 *et seq.*, Executive Order No. 12214 (45 FR 29783,May 6, 1980); Department Organization Order 10-3 (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Order 41-1 (45 FR 11862,February 22, 1980))

Dated: September 4, 1980.

William V. Skidmore,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 80-27597 Filed 9-8-80; 8:45 am]

BILLING CODE 3510-25-M

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15 CFR Part 377

Short Supply Controls; Extension of Deadline for Applications To Participate in the Allocation of the Export Quota for Unprocessed Western Red Cedar for Fiscal Year 1981 and Thereafter

AGENCY: Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Interim rule.

SUMMARY: This rule revises the regulations governing the licensing of exports of unprocessed western red cedar published in the Federal Register on April 2, 1980 (45 FR 21615), by extending, from July 31, 1980, to September 15, 1980, and the same date in future years, the deadline for submission of applications to participate in the allocation of the statutory quota for FY 1981 and those applicable to future fiscal years. It also revises the regulations by providing that only those pre-October 1, 1979 inventories which are still unexported and were not claimed during the current quota year will qualify for the allocation of a share of the FY 1981 quota. Finally, the regulations are revised to provide for the reduction of individual companies' quota allocations in future fiscal years, by the amount of any shipment made in FY 1980 which was in excess of a company's quota allocation for that year and the reallocation of such deducted amounts among other persons qualifying for export quotas.

DATES: This rule is effective September 9, 1980. Comments by November 10, 1980.

ADDRESS: Written comments (five copies) should be sent to: Mr. Converse Hettinger, Director, Short Supply Division, Office of Export Administration, P.O. Box 7138, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mr. Converse Hettinger, Director, Short Supply Division, Office of Export Administration, P.O. Box 7138, Ben Franklin Station, Washington, DC 20044, (202) 377-3984.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of Section 7(i) of the Export Administration Act of 1979 (Pub. L. 96-72 to be codified at 50 U.S.C. App. 2401 *et seq.*), regulations were published in the Federal Register on April 2, 1980 (45 FR 21615), establishing validated licensing requirements for the export of all unprocessed western red cedar commodities. Exports of these commodities, when harvested from state or federal lands, excluding Indian lands and lands in the State of Alaska, were made subject to quota restrictions. The regulations further established a procedure for applying to participate in the allocation of the statutory quotas and prescribed deadlines for the submission of applications to participate in the allocation of the quotas.

The present rule revises the earlier regulations by extending from July 30 to September 15, the deadline for submission of applications to participate in the allocation of the statutory quota for the fiscal year commencing the following October 1. The documentation required to support claims for quota shares in each of the four categories remains the same.

Applicants under the Historical Exporter category who have already submitted documentation establishing their past exports need not reapply for a share of the quota for the FY 1981 or subsequent fiscal years. Similarly, applicants under the Contract Harvestor category who have already submitted affidavits including a statement as to the volume of cedar stumpage which they expect to harvest from state and federal lands during the fiscal year commencing October 1, 1980, need not reapply. However, applicants under the Contract Harvester category who have not submitted such information in affidavit format must do so on or before the required deadline (e.g., September 15, 1980) to be considered for a share of the export quota to be allocated for fiscal year 1981.

Applicants under the Inventory Owner category are required to submit new applications in order to be considered for a share of the export quota to be allocated for FY 1981. Such applications must be in affidavit format, and must state the quantity of unprocessed western red cedar harvested from state or federal lands which the applicant owned and held in inventory on October 1, 1979, and the quantity of this pre-October 1, 1979, cedar inventory which the applicant did not claim in his request for a share of the FY 1980 export quota and which he still has and will have in owned inventory on October 1, 1980. Inventories claimed for a share of the FY 1980 quota which have not yet been exported may *not* be reclaimed for a share of the FY 1981 quota. The Department does not consider that it would be appropriate or reasonable to consider the same log or piece of lumber more than once as a basis for allocating quotas. Such affidavits must be accompanied by documentation establishing the accuracy of the claim, and the burden of proof will be on the applicant.

Persons seeking a share of the export quota on the basis of unique hardship must submit new applications accompanied by appropriate supporting documentation. Such applications must be accompanied by an affidavit setting forth with specificity the precise nature of the unique hardship experienced. Applicants under this category are advised to study carefully the unique hardship provisions of the regulations (Section 377.3) before preparing their applications and they are placed on notice that only those asserted hardships which are "unique" in nature

and not experienced by the industry as a whole will be considered.

In allocating the FY 1981 export quota, the Department will deduct from each quota recipient's preliminary quota allocation any exports which such person made during the period October 1, 1979–April 16, 1980 which were in excess of his FY 1980 quota allocation. If necessary, deductions for such excess exports will also be made in future fiscal years until the excess exports have been completely absorbed. Amounts so deducted will be re-allocated among other persons receiving quota shares, thus assuring allocation of each fiscal year's entire statutory quota.

To be considered, all new and revised applications for a share of the FY 1981 export quota must be physically received in the Short Supply Division, Office of Export Administration, no later than 5:00 p.m., EDT September 15, 1980.

Rulemaking Procedure and Invitation to Comment

Section 13(a) of the Export Administration Act of 1979 (Pub. L. 96–72, to be codified at 50 U.S.C. App. 2401 *et seq.*) ("the Act") exempts regulations promulgated under the Act from the public participation in rulemaking procedures of the Administrative Procedures Act. Because they relate to a foreign affairs function of the United States, it has been determined that these regulations are not subject to Department of Commerce Administrative Order 218–7 (44 FR 2082, January 9, 1979) and International Trade Administration Administrative Instruction 1–6 (44 FR 2093, January 9, 1979) which implement Executive Order 12044 (43 FR 12661, March 23, 1978), "Improving Government Regulations."

However, because of the importance of the issues raised by these regulations and the intent of Congress set forth in section 13(b) of the Act, these regulations are issued in interim form and comments will be considered in developing final regulations.

The period for submission of comments will close November 10, 1980. However, since the Department plans to allocate the FY 1981 statutory quota in the latter part of September 1980, any comments relating to fiscal year 1981 should be submitted as soon as possible.

All comments received before the close of the comment period will be considered by the Department in the development of final regulations. While comments received after the end of the comment period will be considered if possible, this consideration cannot be assured. Public comments which are accompanied by a request that part or all of the material be treated confidentially, because of its business proprietary nature or for any other reason, will not be accepted. Such comments and materials will be returned to the submitter and will not be considered in the development of the final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda (in five copies) which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 3012, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC, 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Mrs. Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

Accordingly, the introductory text of § 377.7(e) and paragraphs (e)(1)–(e)(4) and paragraph (f) of the Export Administration Regulations are revised to read as follows:

§ 377.7 Unprocessed red cedar.

* * * * *

(e) Applications to participate in the allocation of export quotas.

To participate in the allocation of an export quota for the fiscal year which begins on October 1, each applicant must file either the affidavit concerning prior exports required under paragraph (d) of this section or an affidavit stating that he has made no exports during the period October 1, 1979–April 16, 1980, of the unprocessed western red cedar commodities listed in Supplement No. 4 to Part 377. In addition, he must file an application for a quota share under one or more of the categories listed below specifying under which category or categories he is applying. Such application must actually be received by the Office of Export Administration no later than 5:00 p.m. EDT on the preceding September 15 or, if the latter is not a working day, on the first working day thereafter. Applications received subsequent to that date and time will not be considered for participation in the export quota to be allocated for the fiscal year beginning on the following October 1.

(1) Past participation in exports.

Each applicant for a share of an export quota on the basis of a prior history of exports must submit Form DIB–669P, Past Participation Statement, in duplicate, listing his exports of unprocessed western red cedar commodities by commodity, country of destination, and month of export during the eighteen-month period April 1, 1978–September 30, 1979. If the applicant is already required to submit Form DIB–669P pursuant to paragraph (d) of this section because he exported unprocessed western red cedar during the period October 1, 1979 through April 16, 1980, he should not combine the two reports but should submit a separate Form DIB–669P, in duplicate, to claim a quota share based on his past participation in exports. Exporters are advised that the Office of Export Administration intends to compare the aggregates of all Past Participation Statements received with the official Bureau of the Census export statistics for the commodities, months, and countries of destination and, in appropriate cases, to require exporters to submit for audit documentation substantiating the exports claimed on their Past Participation Statements. Exporters should accordingly have in their possession documentation such as copies of Shipper's Export Declarations, bills of lading, letters of credit, commercial invoices, and similar material which will substantiate their claimed history of exports.

(2) Ownership of inventories of unprocessed western red cedar.

Each applicant who seeks a share of an export quota on the basis of owning an inventory of unprocessed western red cedar, must submit the following documentation in duplicate:

(i) An affidavit listing separately by commodity and in board feet scribner all inventories of unprocessed western red cedar harvested from, or produced from commodities harvested from, state or federal lands and destined for export to which he had title as of October 1, 1979, to which he will still have title and which will remain unexported as of the beginning (October 1) of the fiscal year for which he is seeking a quota allocation. The affidavit should exclude all stocks of unprocessed western red

cedar which were not harvested from state or federal lands and all stocks which were claimed in seeking a share of a prior year's export quota. In those instances where the applicant was neither the harvester nor the producer of the commodities, the affidavit should identify the harvester(s) and/or producer(s) and the quantities in board feet scribner allocable to each, and should be accompanied by similar affidavit(s) as to origin from such harvesters and/or producers;

(ii) A certificate of inspection by a log scaling and grading bureau recognized by the state or federal agency having jurisdiction over the land where the timber was harvested, stating the volume of the cedar in board feet scribner and listing each separate brand, tag or paint marking appearing on any log in the export-committed inventory on which his application for a quota share is based, or on any log from which the unprocessed western red cedar commodities were produced; and

(iii) A copy of the signed export sales contract(s) committing the unprocessed western red cedar for or into export during the fiscal year for which a share of the export quota is sought.

(3) Contractual obligations to harvest western red cedar from state or federal lands.

A contract harvester who seeks a share of an export quota on the basis of having entered into a contract, prior to October 1, 1979, to harvest western red cedar from state or federal lands with the intention of selling it for or into export must submit the following documentation:

(i) An affidavit listing, by federal or state agency with which it has been entered into, the following: (A) each of the applicant's separate harvesting contracts which was valid as of October 1, 1979, and which has not yet been completed; (B) the estimated volume, in board feet scribner, of unharvested western red cedar stumpage remaining under each contract as of October 1, 1979 and as of the date of application; (C) the volume of such western red cedar stumpage which the applicant intended on October 1, 1979, and still intends, as of the date of this affidavit, to sell for or into export during the fiscal year for which the application has been filed; (D) the date on which the contract was entered into; (E) the date it expires; and (F) the volume of cedar stumpage under that contract which the applicant expects to harvest during the fiscal year which begins on the following October 1, and during each succeeding fiscal year in which he expects to harvest under that contract.

(ii) A copy of each harvesting contract listed under paragraph (e)(3)(i) of this section; and

(iii) A copy of each export sales contract entered into prior to October 1, 1979 committing his then unharvested stumpage into export, or alternative evidence of his intent to export that stumpage (e.g. an affidavit specifying the quantity in board feet scribner of western red cedar harvested by the applicant from state or federal lands and the proportion thereof which the applicant sold for or into export during the period October 1, 1977–September 30, 1979.

(4) Hardship and exceptions applications.

Each applicant for a share of an export quota on the grounds of unique hardship or other exceptional circumstances must file a request therefor accompanied by a full statement, in affidavit format, of the precise nature of the unique hardship or exceptional circumstances experienced. The affidavit must explain how the hardship or exceptional circumstances were caused by the imposition of these controls, and demonstrate that there is no practicable alternative to the relief requested, i.e., the granting of a share of the quota for the export of unprocessed western red cedar. In addition to the general criteria for unique hardship set forth in § 377.3, the Office of Export Administration will consider the extent to which the unprocessed western red cedar covered by the application has been subjected to primary manufacture.

* * * * *

(f) Allocation of export quotas.

(1) The Office of Export Administration will review the applications submitted under paragraph (e) of this section for a share of the export quota and, based on that review, will determine what proportion of the fiscal year's quota specified in paragraph (c) of this section to allot to each of the four categories set forth under paragraph (e) of this section. After determining the quantity to be allocated to each of the four categories discussed in paragraph (e) of this section, quota shares will be allocated to successful applicants within each of the first three categories on a proportionate basis and, after making any adjustments required by paragraph (f)(3) of this section, written notification thereof will be mailed as soon as possible to each person receiving a quota share. Quota shares under the hardship and exceptions category will be allocated after a case by case review of each presentation and in accordance with the merits of each case. Persons applying under the hardship and exceptions category will also be notified in writing as to whether their applications have been successful.

(2) Quota allocations will be made without restriction as to the particular unprocessed western red cedar commodity involved and will entitle the allocation holders to apply for licenses to export to any destination other than one to which exports generally are restricted under other provisions of these regulations.

(3) Each person who exported a quantity of western red cedar subject to quota restriction during the period October 1, 1979–April 16, 1980, which was in excess of his quota allocation for the period October 1, 1979–September 30, 1980, will have such excess exports deducted from his quota allocation in FY 1981 and in subsequent fiscal years until such excess exports have been totally absorbed. The quantities so deducted from exporters' allocations will then be re-allocated among other persons receiving quota shares so as to permit the issuance of licenses in each fiscal year for up to the total statutory quota.

(4) Requests by quota holders to extend the validity of their annual quotas beyond the fiscal year to which they relate will not be considered. Any portion of a quota share remaining unlicensed as of close of business on September 30, each year will expire and be lost.

* * * * *

Drafting Information: The principal authors of these rules are Converse Hettinger, Director, Short Supply Division, Office of Export Administration; Christopher Marcich, Export Administration Specialist, Short Supply Division, Office of Export Administration; and Pete M. Dalmut, Attorney-Adviser, Office of General Counsel, Department of Commerce.

(Secs. 7, 15 and 21, Pub. L. 96–72, to be codified at 50 U.S.C. App. 2401 et seq.; E.O. 12214, (45 FR 29783, May 6, 1980); Department Organization Order 10–3, (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Order 41–1 (45 FR 11862, February 22, 1980))

Dated: September 4, 1980.

Kent N. Knowles,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 80-27637 Filed 9-4-80; 4:03 pm]

BILLING CODE 3510-25-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 201, 204, 260, and 282

[Docket No. RM79-14; Order No. 49]

Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978; Correction

September 3, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Errata notice to correct Commission forms to comply with provisions of final order.

SUMMARY: The Federal Energy Regulatory Commission (Commission) Order Nos. 49 and 49-A, "Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978," amended the Commission's Uniform Systems of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act for Classes A, B, C and D, to include therein the Account Nos. 192.1, 192.2, 805.2, and 731.2. The forms on which these accounts were to be reported, Form Nos. 2 and 2-A, were not correspondingly changed at the time of the rulemaking to include these accounts. By this notice, the Commission corrects Form Nos. 2 and 2-A to include Account Nos. 192.1, 192.2, and 805.2 in Form No. 2, and Account Nos. 192.1, 192.2 and 731.2 in Form No. 2-A.

FOR FURTHER INFORMATION CONTACT:
Cathy Ciaglo, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 3329, Washington, D.C. 20426. (202) 357-8318.
Elaine M. Dawson, Office of Chief Accountant, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 3405N, Washington, D.C. 20426. (202) 357-9190.

SUPPLEMENTARY INFORMATION: In the Federal Energy Regulatory Commission's Order Nos. 49 and 49-A,[1] "Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978," the Commission amended its Uniform Systems of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act for Class A and Class B,[2] and Class C and Class D,[3] by adding thereto the Account Nos. 192.1, 192.2, 805.2 and 731.2.[4] Corresponding revisions to the forms on which these accounts are to be reported were inadvertently omitted: Form No. 2, "Annual Report for Natural Gas Companies (Class A and Class B)" should have included Account Nos. 192.1, 192.2 and 805.2, and Form No. 2-A, "Annual Report for Natural Gas Companies (Class C and Class D)" should have included Account Nos. 192.1, 192.2 and 731.2.

The schedules of Form Nos. 2 and 2-A are respectively changed as follows to include Account Nos. 192.1, 192.2, 805.2 and 731.2 [5]

Form No. 2

Schedule Page 110, Comparative Balance Sheet, add:

Line 43—Unrecovered Incremental Gas Costs (192.1)

Line 44—Unrecovered Incremental Surcharges (192.2)

Schedule Page 528, Gas Operations and Maintenance Expenses (Continued), add:

Line 73—805.2, Incremental Gas Cost Adjustments

Schedule Page 535, Gas Purchases, Instruction 2, add:

805.2, Incremental Gas Cost Adjustments

Schedule Pages 535-536A, revise title as follows:

Gas Purchases (Accounts 800-805.2)

Form No. 2-A

Schedule Page 4, Comparative Balance Sheet, add:

Line 28—Unrecovered Incremental Gas Costs

Line 29—Unrecovered Incremental Surcharges

Schedule Page 12, revise title as follows:

Gas Purchases (Accounts 730-731.2)

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27375 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[1] Order No. 49 was issued September 28, 1979 (44 FR 57726, October 5, 1979); Order No. 49-A was issued September 27, 1979 (45 FR 767, January 3, 1980).

[2] 18 CFR Part 201.

[3] 18 CFR Part 204.

[4] 192.1 Unrecovered Incremental Gas Costs (Class A, B, C and D Companies). 192.2 Unrecovered Incremental Surcharges (Class A, B, C and D Companies). 805.2 Incremental Gas Cost Adjustments (Class A and B companies only). 731.2 Incremental Gas Cost Adjustments (Class C and D companies only).

[5] Attached are the schedules in Form Nos. 2 and 2-A, as revised (Attachments A and B, respectively). These schedules are not being printed by the Federal Register. Copies are available in the Office of Public Information.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Fair Housing and Equal Opportunity

24 CFR Part 115

[Docket No. 80-818]

Fair Housing; Recognition of Substantially Equivalent Laws

AGENCY: Housing and Urban Development/Office of Fair Housing and Equal Opportunity.

ACTION: Final rule.

SUMMARY: This rule amends current regulations which provide for recognition of State and local fair housing laws which provide rights and remedies which are substantially equivalent to those provided by Title VIII of the Civil Rights Act of 1968. The amendment grants recognition to the following:

States

California; Iowa; and Maryland.

Localities

Charleston, W. Va.; Charlotte, N.C.; Fort Wayne, Ind.; Montgomery County, Md.; Omaha, Nebr.; Philadelphia, Pa.; Phoenix, Ariz.; Seattle, Wash.; Sioux Falls, S. Dak.; and Tacoma, Wash.

EFFECTIVE DATE: October 9, 1980.

FOR FURTHER INFORMATION CONTACT:
Steven J. Sacks, Director, Federal, State and Local Programs Division, Fair Housing Enforcement and Section 3 Compliance, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451, 7th Street SW., Washington, D.C. 20410, (202) 426-3500.

SUPPLEMENTARY INFORMATION: On June 17, 1980, the Department of Housing and Urban Development published in the Federal Register (45 FR 40999) a notice that pursuant to Section 810(c) of Title VIII of the Civil Rights Act of 1968, as amended, it was proposing to grant recognition to the fair housing laws of three States and ten localities as being substantially equivalent to Title VIII. The evaluation of the fair housing laws of these three States and ten localities was conducted in accordance with the provisions of 24 CFR Part 115, with particular reference to §§ 115.2(a), 115.3 and 115.8. In the notice of June 17, 1980, those sections were set forth to provide appropriate information to all parties with an interest in HUD's proposed action.

All interested persons and organizations were invited to submit written comments on or before

August 18, 1980. No comments were received with respect to the jurisdictions listed in this final rule.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 5218, Department of HUD, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule is not listed in the Department's semiannual agenda of significant rules, published pursuant to Executive Order 12044.

PART 115—RECOGNITION OF SUBSTANTIALLY EQUIVALENT LAWS

Accordingly, it has been determined to adopt the proposed amendment as a final rule and amend § 115.11 of 24 CFR Part 115 by adding the three States and ten localities to the list of jurisdictions with substantially equivalent laws as follows:

§ 115.11 Jurisdictions with substantially equivalent laws.

The following jurisdictions are recognized as providing rights and remedies for alleged discriminatory housing practices substantially equivalent to those in the Act, and complaints will be referred to the appropriate State or local agency as provided in § 115.6.

States

Alaska	Nebraska
California [1]	Nevada
Colorado	New Hampshire
Connecticut	New Jersey
Delaware	New Mexico
Indiana	New York
Iowa [1]	Oregon
Kansas	Pennsylvania
Kentucky	Rhode Island
Maine	South Dakota
Maryland [1]	Virginia
Massachusetts	West Virginia
Michigan	Wisconsin
Minnesota	

Localities

Charleston, W. Va.[1]	Omaha, Nebr.[1]
Charlotte, N.C.[1]	Philadelphia, Pa.[1]
District of Columbia	Phoenix, Ariz.[1]
Fort Wayne, Ind.[1]	Seattle, Wash.[1]
Montgomery County, Md.[1]	Sioux Falls, S. Dak.[1]
	Tacoma, Wash.[1]

[1] Denotes States and localities added to the list of jurisdictions currently recognized.

(Section 810(c) of the Civil Rights Act of 1968, 42 U.S.C. 3610; Section 7(d) of the Department of HUD Act, 42 U.S.C. 3535(d); Section 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o); Section 234 of the Housing and Community Development Amendments of 1978)

Issued at Washington, D.C. on September 2, 1980.

Sterling Tucker,

Assistant Secretary, Fair Housing and Equal Opportunity.

[FR Doc. 80-27684 Filed 9-8-80; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-80-852]

Community Development Block Grants and Urban Development Action Grants; Conforming Amendments

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Interim rule and request for comments.

SUMMARY: This rule revises provisions of the Community Development Block Grant (CDBG) regulations to conform to the Housing and Community Development Amendments of 1979. This rule included changes to Subparts A, General Provisions; B, Allocation and Distribution of Funds; D, Entitlement Grants; and K, Other Program Requirements.

EFFECTIVE DATE: October 1, 1980. Comment due date: November 10, 1980.

ADDRESS: Send comments to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of HUD, 451 Seventh Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Charles Kreiman or Harriet Frank, Office of Block Grant Assistance, Department of Housing and Urban Development, Washington, D.C. 20410, 202/755-5977 and 755-1871 respectively. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION: Sections 103 and 109 of the Housing and Community Development Amendments of 1979 (PL 96-153) made various technical changes to the CDBG program.

Section 103(a) of the Amendments increased the funds authorized for the Urban Development Action Grant program from $400,000,000 to $675,000,000 for Fiscal Year 1980. This rule revises the section on allocation of funds for discretionary grants (§ 570.104(e)) to reflect this change.

Section 103(b) of the Amendments increased the set aside of funds for Small Cities grants in metropolitan areas from $250,000,000 to $275,000,000 for Fiscal Year 1980. This rule revises § 570.101(a), Metropolitan area "set-aside" fund, accordingly.

The provisions of section 103(c) of the Amendments concerning the Small Cities CDBG program have been implemented separately in a final rule published on March 12, 1980 at 45 FR 15927.

Section 103(d) of the Amendments extended the use of a pro-rata reduction through Fiscal Year 1980, when funds available are insufficient to meet all basic grant needs. This regulation extends the applicability of the pro-rata reduction provision.

Section 103(e) of the Amendments revised the basis for computing grants to Urban Counties. Under the amendment, the entire area of a participating jurisdiction that is partly within and partly outside of the urban county shall be included in computing the grant for the urban county if part of that jurisdiction's area would otherwise be included in the computation and if the part that is outside of the county is not included in computing the grant for any other unit of general local government. In addition to incorporating the statutory provisions, § 570.102 requires that the unit of general local government that is partly within and partly outside of an urban county enter into a cooperation agreement with the urban county to undertake or assist in undertaking essential housing and community development activities. Where authority under State law to undertake such activities in the part of the participating jurisdiction that is outside of the urban county rests with another county or other government unit, that other unit must also enter into the cooperation agreement. The jurisdiction that is partly within more than one urban county has the option to decide in which county its area shall be included if it wants its entire area to be included in only one county rather than being split.

Section 103(f) of the Amendments added the Northern Mariana Islands to the entities defined as a unit of general local government. This rule adds the Northern Mariana Islands to the definition found at § 570.3(v).

Section 103(g) of the Amendments revised provisions of the statute delegating authority for environmental review of proposed projects by grant recipients. The revision makes clear that the authority to delegate environmental review and decisionmaking responsibilities included review and decisionmaking under the National Environmental Policy Act (NEPA) of 1969 as well as other provisions of law specified at 24 CFR 58.1(a)(3) and (a)(4), which further the purposes of NEPA. Accordingly, the certification at § 570.307(e) and the general reference to

environmental concerns (§ 570.603) are revised to reflect this delegation of responsibility.

A new § 570.306(b)(2)(iv)(F) is added to reflect the requirement of section 109(a) of the Amendments. Applicants must include in their Housing Assistance Plans (HAP) a discussion of the impact of conversions of rental housing to condominum or cooperative ownership on the housing assistance needs of low- and moderate-income households. This requirement is added to the list of special housing conditions and needs to be included in the narrative to HAP Table II.

This new language merely re-emphasizes an existing requirement that both public and private displacement (which, of course, includes displacement due to condominium or cooperative conversion) be considered by applcants in preparing their Housing Strategies and HAP's. The Housing Strategy requirements at § 570.304(b)(2)(v) require a description of the applicant's actions to assist persons displaced directly or indirectly by the community development program.

In addition, the HAP already requires applicants to estimate the numbers of low- and moderate-income households displaced or to be displaced by public or private action during the three year program. Because these displacees or potential displacees are included in the needs figures of the HAP, they must also be reflected in the applicant's goals for the provision of housing assistance.

Inasmuch as the needs of those displaced or to be displaced by condominium or cooperative conversions are already reflected in approved Housing Assistance Plans, grantees will not be required to resubmit or amend their existing HAP's to conform with this new requirement. The new requirements will become effective whenever an applicant next submits a new or revised HAP Table II.

This rule includes provisions which must become effective immediately so that applicants can take into account statutory changes which apply to applications now being developed. In particular, the revision to permit jurisdictions partly within and partly outside of an urban county to be included in the urban county must become effective immediately in order to facilitate the urban county qualification process which must be completed by October, 1980. In view of these factors, the Secretary has determined that it would be impracticable to invite public comment on this rule prior to its effective date. However, interested persons are invited to participate in this rulemaking by filing data, comments and suggestions with the Rules Docket Clerk at the above address, on or before the comment due date. Each comment should include the commentor's name and address, and must refer to the docket number indicated in the heading to this document. all relevant comments will be considered before adoption of a final rule and copies of all comments received will be available for copying and inspection in the Office of the Rules Docket Clerk at the above address.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability is available for public inspection in the Office of the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of HUD, 451 Seventh Street, S.W., Washington, D.C. 20410.

This rule is not listed in the Department's semi-annual agenda of significant rules pursuant to Executive Order 12044.

Accordingly, the Department amends Title 24, Chapter V of the Code of Federal Regulations as follows:

I. Section 570.104(e) is revised to read as follows:

§ 570.104 Funds for discretionary grants.

* * * * *

(e) *Urban Development Action Grants fund.* Using funds appropriated for each of the Fiscal Years 1978, 1979, and 1980 for such purpose, grants may be made to assist severely distressed cities and urban counties to provide supplemental assistance in alleviating excessive physical and economic deterioration. Such funds allotted shall not exceed $400,000,000 for Fiscal Years 1978 and 1979 and shall not exceed $675,000,000 in Fiscal Year 1980.

II. Section 570 101(a) is revised to read as follows:

§ 570.101 Allocation between metropolitan and metropolitan areas.

* * * * *

(a) *Metropolitan area "set-aside" fund.* $50,000,000 for each of Fiscal Years 1975 and 1976, $200,000,000 for Fiscal Year 1977 (not more than 50 percent of which to be used for hold harmless needs in metropolitan areas), $350,000,000 for Fiscal year 1978 (not more than 50 percent for hold harmless needs in metropolitan areas), $265,000,000 for Fiscal Year 1979 (not more than $25,000,000 for hold harmless needs in metropolitan areas), and $275,000,000 for Fiscal Year 1980.

III. Section 570.103(f) is revised to read as follows:

§ 570.103 Hold harmless grants.

* * * * *

(f) *Pro-rata reduction.* In the event that the total amount of funds available for distribution in metropolitan areas under this Part in Fiscal Years 1978, 1979, or 1980 is insufficient. . . .

IV. Section 102(b)(4) is redesignated as Section 102(b)(5) and a new Section 102(b)(4) is inserted as follows:

§ 570.102 Basic grant amounts.

* * * * *

(b) Urban counties.

* * * * *

(4) In computing the grant amounts for an urban county, there shall be included all of the area of any unit of general local government which is part of, but is not located entirely within the boundaries of, such urban county, provided that:

(i) The part of such unit of general local government which is within the boundaries of such urban county would otherwise be included in computing the grant amount (e.g. that such unit of general local government either enters into a cooperation agreement with the urban county or does not elect to have its population excluded from the county);

(ii) The part of such unit of general local government which is not within the boundaries of such urban county is not included as part of any other unit of local government for purposes of this section. Where such unit is within the jurisdiction of more than one urban county and it wishes its entire area to be included in only one, it shall have the option to determine in which urban county its area shall be included;

(iii) Such unit of general local government has entered into a cooperation agreement with such urban county to undertake or assist in the undertaking of essential activities pursuant to § 570.105. Where the authority to undertake essential activities within any portion of such unit of general local government under State law rests with another county or other unit of general local government, that other county or unit of general local government has also entered into the cooperation agreement.

V. Section 570.3(v) is revised to read as follows:

§ 570.3 Definitions

* * * * *

(v) "Unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands.

VI. Section 570.307(e)(1) is revised to read as follows:

§ 570.307 Certifications.

* * * * *

(e) Its chief executive officer or other authorized certifying office of the applicant:

(1) Consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 (NEPA) and other provisions of Federal law, as specified at 24 CFR 58.1(a)(3) and (a)(4), which further the purposes of NEPA insofar as the provisions of such Federal law apply to this Part;

VII. Section 570.603 is revised to read as follows:

§ 570.603 Environment.

In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of Federal law which further the purposes of such Act (as specified in 24 CFR 58.1(a)(3) and (a)(4)) are most effectively implemented in connection with the expenditure of block grant funds, the recipient shall comply with the Environmental Review Procedures for the Community Development Block Grant program (24 CFR Part 58). These regulations set forth procedures for carrying out the environmental responsibilities under the National Environmental Policy Act of 1969 (NEPA) and other provisions of Federal law which further the purposes of NEPA. Upon completion of the environmental review the recipient shall submit a certification and request for release of funds for particular projects in accordance with 24 CFR Part 58.

VIII. Section 570.306(b)(2)(iv) is amended to read as follows:

§ 570.306 Housing Assistance Plan.

* * * * *

(b) *Housing Assistance Plan Content.*

* * * * *

(2) *Housing Assistance Needs*

* * * * *

(iv) In addition, the applicant shall provide a narrative statement which summarizes any special housing conditions in the community and special housing needs found to exist in the total group of lower-income households in the community. Such summary shall include but need not be limited to, discussion of:

(A) Female heads of households;

(B) Individual minority groups;

(C) Handicapped persons;

(D) Special housing conditions such as concentrations of mobile homes;

(E) Special housing needs related to a community's economic base such as military housing, migrant workers, and retirement centers; and

(F) The impact of conversion of rental housing to condominium or cooperative ownership.

(Title I, Housing and Community Development Act of 1974, as amended; (42 U.S.C. 5301 et seq.); Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d); and Section 7(o) Department of Housing and Urban Development Act (42 U.S.C. 335(d))

Issued at Washington, D.C., July 25, 1980.

Robert C. Embry, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 80-27647 Filed 9-8-80; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 882

[Docket No. R-80-697]

Section 8 Housing Assistance Payments Program—Existing Housing Elimination of Rent Reduction Incentive

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: The Department is issuing a final rule to amend the Section 8 Existing Housing Program regulations to eliminate the Rent Reduction Incentive (Rent Credit). This final rule also establishes the procedures for the gradual phasing out of this incentive for those families already receiving the Rent Credit.

EFFECTIVE DATE: October 9, 1980.

FOR FURTHER INFORMATION CONTACT: Cecelia D. McConnell, Existing Housing Division, Office of Existing Housing and Moderate Rehabilitation Programs, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 755-6596. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On September 26, 1979 (at 44 FR 55392), a proposed revisions to the Section 8 Existing Housing Program regulations, 24 CFR Part 882, was published in the Federal Register for public comment. The Department proposed to amend § 882.115 to eliminate the Rent Credit. In addition to eliminating the Rent Credit, the proposed rule also provided procedures for the gradual phasing out of this incentive for those families already receiving the Rent Credit.

The purpose of the current rent reduction incentive provision was to encourage families to choose decent, safe, and sanitary units renting for less than the Fair Market Rent (FMR) and to allow the family to keep a portion of the difference between the actual rent and the FMR by a reduction (Rent Credit) in its required monthly Gross Family Contribution (GFC).

As cited in the proposed rule, the Department proposed to amend the Section 8 Existing Housing regulations to eliminate the Rent Credit. This action was proposed because: (a) the results of a Survey of the Section 8 Existing Program indicated, among other things, that no more than 14 percent of the families assisted understood the incentive system and that families who may have understood the Rent Credit were not renting below the FMR more than those who did not understand it; and (b) both the Senate Appropriations Committee Report for the 1978 Appropriations Act (Report No. 95-280, page 10), and the General Accounting Office (GAO), Report of January 28, 1977 entitled "Major Changes are Needed in the New Leased-Housing Program" contained recommendations regarding elimination of this program feature. The GAO Report concluded that the costs and problems in establishing, administering, and monitoring the Rent Credit outweigh any savings to be made. Interested parties were given until November 26, 1979 to submit written comments to the proposed rule. By the end of the comment period, comments were received from 59 organizations and individuals. A discussion of the more recurrent and significant comments is set forth below.

The majority of the comments favored the proposed changes to § 882.115 of the Section 8 Existing Housing regulations. Some of the reasons cited by comments for the elimination of the Rent Credit are:

(1) The rent reduction incentive does not induce program participants to search for and/or rent less costly housing units. Their housing cost is reduced so greatly by participating in the program that the additional small amount of savings is not important.

(2) The current rent reduction incentive program is difficult to administer and results in many miscalculations of rent.

(3) The briefing received by the tenant is impractical and leads to great disappointment for the applicant.

Two comments expressed concern about the time period for cutting off families presently receiving the rent credit. They suggested that these families should continue to receive the

rent credit as long as they remain in their present units. The Department has determined, for consistency, that there should be a point in time when this aspect of the program is completely eliminated, and Public Housing Agencies (PHAs) are no longer held accountable for this procedure. At the same time, we feel the credit should be phased out gradually rather than all at once. Therefore, the final rule states that the rent credit will be eliminated from the program within three years, since leases for units under the program pursuant to Section 882.107 ". . . shall be for not less than one year nor more than three years. . . ."

Six of the 59 comments opposed eliminating the Rent Credit from the Existing Housing Program regulations. One comment indicated that, if this incentive were removed, there would be no motivation for tenants to select units with rents below existing FMRs. In considering these comments, the Department observed that one basis for GAO's recommendation for eliminating the Rent Credit was that it appeared to have a negligible effect on the number of families selecting cheaper housing. This is because half of the families receiving the Rent Credit did not move from the unit they lived in before applying to the program. Also, as discussed in the proposed rule, current studies and other evidence suggests that assisted families had a negligible role in negotiating the terms of the Section 8 lease, including the amount of rent.

Three comments suggested that eliminating the Rent Credit from the program would be detrimental to elderly, handicapped, and working families as those families would more likely suffer rent increases as a result. In response to these comments, the Department feels that the increased amounts that any family would have to pay upon the elimination of the Rent Credit would be minimal and, at any rate, the family would pay no more than between 15 and 25 percent of their income for housing as required under program regulations.

As was noted in the proposed rule, the Senate Appropriations Committee Report on the 1978 HUD Appropriations Bill directed the Department to eliminate the Rent Credit for families who do not choose to move. However, many of the comments which favored the elimination of the Rent Credit expressed the concern that if it is to be eliminated for applicants who lease in place, it must be eliminated for all in order to prevent an unfair situation. We agree with this position since there are no compelling reasons, given the nature of the Rent Credit, to eliminate it for certain families while continuing it for others.

Given the complexity of the current formula for rent reduction, and the recommendations of the Senate Appropriations Committee, GAO and others, the Department believes that the present rent reduction credit should be phased out. This does not preclude future consideration of other methods of cost containment.

NEPA

A Finding of Inapplicability with respect to environmental impact has been prepared in accordance with HUD procedures. A copy of this finding of inapplicability will be available for public inspection during regular business hours at the Office of Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

This rule is not listed in the Department's semiannual agenda of significant rules, published pursuant to Executive Order 12221.

Accordingly, 24 CFR Part 882, is amended as follows:

1. Amend § 882.115 by adding a new paragraph (d) to read:

§ 882.115 Rent reduction incentive.

* * * * *

(d) As of (insert effective date of these regulations), no family entering the program may receive a Rent Credit. For any family currently receiving a reduction in its Gross Family Contribution because the unit selected by the family has a Gross Rent less than the Fair Market Rent or higher rent approved by HUD under § 882.106(a)(3), the rent reduction will be eliminated at the end of the stated lease term or when the family moves to another unit, whichever is earlier.

(Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Issued at Washington, D.C., September 4, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 80-27841 Filed 9-8-80; 8:45 am]

BILLING CODE 4210-01-M

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24 CFR Part 889

[Docket No. R-80-848]

Section 8 Housing Assistance Payments Program—Computation Gross Family Contribution

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: HUD is issuing this interim rule to revise its regulations for determining how much of its income a Family pays towards rent under the Section 8 Housing Assistance Payments Program. This interim revision reflects recent statutory changes.

EFFECTIVE DATE: October 1, 1980.

Comments due: Comments should be filed on or before November 10, 1980.

ADDRESS: File comments with the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Edward Whipple, Chief, Public Housing Rental and Occupancy Branch (202) 755-5842, James Tahash, Director, Multifamily Program Planning Division (202) 426-8730, Stephanie Giddings, Existing Housing Division (202) 755-6596, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. None of the above telephone numbers is toll-free.

SUPPLEMENTARY INFORMATION: Section 202(b) of the Housing and Community Development Amendments of 1979 (PL #96-153) amends Section 8(c)(3) of the United States Housing Act of 1937 by establishing new rules for computing the Gross Family Contributions required of some Eligible Families. Specifically, the Amendments raise the Gross Family Contribution required of Very Large Lower-Income Families (Without Exceptional Medical or Other Expenses) from 15 to 20 percent of family income, and raise the minimum Gross Family Contribution limits applicable to certain other Lower-Income Families from 15 to 20 percent of family income. These amendments also permit the Department to raise the maximum from 25 to 30 percent of family income. Section 202(c) provides, however, that the changes authorized by Section 202(b) are not to be applied to "families whose occupancy of housing units assisted under the United States Housing Act of 1937 commenced prior to (January 1, 1980) . . . so long as such occupancy is continuous thereafter."

In order to implement the statutory requirements as expeditiously as possible, and to facilitate the orderly transition to the new requirements for program administrators, the Department has decided to make the fewest possible changes at this time, consistent with the statute. In addition, the Department has determined to minimize the financial hardship to certain families, consistent with the statute. Accordingly, although the required change in the minimum

family contribution from 15 to 20 percent of family income for certain families is being made, HUD has determined *not* to increase the maximum contribution for certain other families from 25 to 30 percent of family income.

To avoid the hardship which would result if affected families were required to make retroactive payments back to January 1, 1980, (the effective date of the amendments), HUD considers it necessary to limit the immediate effect of the statutory changes to families who begin occupancy 60 days after publication of this rule.

HUD has determined that a retroactive payment requirement would impose undue administrative burdens on Public Housing Agencies (HPHs) and Section 8 owners, and would impose financial burdens on many of the affected Families. Altering the leases of such Families to reflect interim increases in Gross Family Contributions for this reason could also be inconsistent with some State laws relating to tenant's rights, thereby potentially exposing owners and HUD to litigation.

Section 889.105 is being revised to indicate that the Gross Family Contribution required of certain Very Large Lower-Income Families (Without Exceptional Medical or Other Expenses) and other Lower-Income Families not covered in other categories is dependent upon the time at which the Family establishes occupancy in a PHA's Existing Housing Program or in the same Section 8 assisted project. Under the revised regulation, a Family will be subject to the new Gross Family Contribution requirements if it leases a Section 8 unit on or after the effective date of this interim rule, but will not be affected by the changes if it commenced occupancy prior to January 1, 1980 and maintains occupancy in the same PHA's Existing Housing Program or in the same Section 8 assisted project on a continuous basis. A Family which initially leased a unit in a program or project on or after January 1, 1980, but prior to the effective date of this interim rule, will not be affected by the changes until its current lease expires or until its next income reexamination (as provided in the lease) whichever occurs first.

In the interest of implementing promptly the amendments of Section 202 which were to have immediately affected families entering the program on or after January 1, 1980, HUD has determined that good cause exists for making these revised regulations effective on an interim basis. Although the Department has no definitive knowledge at this time of the effects of the statutory changes (i.e., the absolute or relative payment level of various families in relation to income, size, and other factors), HUD has determined to implement the changes, consistent with the statute, in a manner which would cause the least amount of disruption of current practices. The Department is, however, interested in receiving and invites comments regarding any perceived inequities and suggestions for reducing any hardships. Such comments will be given full consideration before the Final Rule is adopted.

This regulation implements the mandatory provisions of the 1979 amendments only for the Section 8 Housing Assistance Payments Program (including Existing Housing, Moderate Rehabilitation, New Construction, Substantial Rehabilitation, State Agencies, Farmer's Home Administration, Section 202, and Property Disposition and Loan Management Set-Aside Programs.)

In addition, the Department expects to publish an Advance Notice of Proposed Rule soliciting public comments on other changes to achieve the maximum consistency in establishing tenant rents between the Section 8 and the public housing programs.

NEPA

The Department has determined that these regulations do not constitute a major Federal action significantly affecting the quality of the human environment. Accordingly, a Finding of no Significant Impact under the National Environmental Policy Act of 1969 has been made and is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the address specified above.

This is not listed in HUD's semiannual agenda of significant rules, published pursuant to Executive Order 12044.

Accordingly, 24 CFR Part 889 is amended by revising § 889.105 to read as follows:

§ 889.105 Computation of gross family contribution on a monthly basis.

If a family qualifies for more than one category, select the category resulting in the lowest monthly gross family contribution.

(a) Very Low-Income Family. The monthly gross family contribution shall be 25 percent of the family's monthly income after allowances, but in no event less than 15 percent of the family's monthly income.

(b) Larger Very Low-Income Family or Any Lower-Income Family with Exceptional Medical or Other Expenses. The monthly gross family contribution shall be 15 percent of the family's monthly income.

(c) Very Large Lower-Income Family. The monthly gross family contribution shall be 20 percent of the family's monthly income except that:

(1) For a family who began occupancy of an assisted unit prior to January 1, 1980 and who continues to participate in the same Section 8 Existing program or who continues to live in the same Section 8 assisted project, the monthly gross family contribution shall be 15 percent of the family's monthly income and

(2) For a family whose occupancy commenced on or after January 1, 1980 but prior to the effective date of this rule, the monthly gross family contribution shall be computed in accordance with paragraph (c)(1) until the time of the family's next lease expiration (as provided in the lease) or income reexamination, whichever is sooner. At that time the family will be required to begin paying 20 percent of the family's monthly income.

(d) Other Lower-Income Family (with income above 50 percent of median, but not exceeding 80 percent). The monthly gross family contribution shall be 25 percent of the family's monthly income after allowances, but in no event less than 20 percent of the family's monthly income except that:

(1) For a family whose participation in the same Section 8 Existing program or whose residency in the same Section 8 assisted project commenced prior to January 1, 1980, the monthly gross family contribution shall be 25 percent of the family's monthly income after allowances, but in no event less than 15 percent of the family's monthly income, and

(2) For a Family whose occupancy commenced on or after January 1, 1980 but prior to the effective date of this rule, the monthly gross family contribution shall be computed in accordance with paragraph (d)(1) until the time of the family's next lease expiration (as provided in the lease) or income reexamination, whichever comes first. At that time, the family will be required to pay 25 percent of the family's monthly income after allowances.

(Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)))

Issued at Washington, D.C., July 25, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 80-27645 Filed 9-8-80; 8:45 am]

BILLING CODE 4210-01-M

Office of Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection

24 CFR Part 3282

[Docket No. R-80-743]

Mobile Home Procedural and Enforcement Regulations; Disqualification and Requalification of Primary Inspection Agencies

AGENCY: Office of Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection HUD.

ACTION: Final rule.

SUMMARY: This rule amends the Mobile Home Procedural and Enforcement Regulations to provide for automatic disqualification of any primary inspection agency [Production Inspection Primary Inspection Agency (IPIA) or Design Approval Primary Inspection Agency (DAPIA)] if such agency has been inactive for a period of one year. This disqualification is based upon the Department's belief that a primary inspection agency may lose expertise and may fail to keep abreast of changes in the regulations if it is not actively engaged in the performance of its functions. In addition, the required annual monitoring cannot be done for an agency which is not performing.

EFFECTIVE DATE: October 9, 1980.

FOR FURTHER INFORMATION CONTACT: John Mason, Director, Enforcement Division, Office of Mobile Home Standards, Room 3242 Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410 (202) 755-6894.

SUPPLEMENTARY INFORMATION: Regulations dealing with primary inspection agencies (both IPIA's and DAPIA's) were promulgated pursuant to the Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 *et seq.* In order for a primary inspection agency to provide services pursuant to the Mobile Home Procedural and Enforcement Regulations, it must be approved by the Department pursuant to these regulations.

The present rule 24 CFR 3282.356 deals with disqualification of a primary inspection agency where such agency is not adequately carrying out one or more of its functions. It does not address the issue of disqualification of an inactive primary inspection agency.

The Department believes that a primary inspection agency may lose expertise and may fail to keep abreast of changes in the regulations if it is not actively engaged in the performance of its functions. In addition, the performance of each primary inspection agency must be monitored at least once a year pursuant to 24 CFR 3282.453(b). It is, of course, impossible to monitor the performance of an agency which is not performing.

In order to deal with these concerns, this rule was prepared and published as a proposed rule in the Federal Register, Vol. 44, No. 228, pages 67440-41 on November 26, 1979. Only one comment was received which concurred fully with the regulation as proposed. No other comments were received. Accordingly, no changes have been made in this rule as it was proposed. The rule would automatically disqualify any primary inspection agency which has been inactive for a period of one year. The rule also permits any agency which has been disqualified because of inactivity to resubmit an application in order to be requalified.

A Finding that the substance of this rule does not affect the quality of the environment was made in accordance with the Departmental "Procedures for Protection and Enhancement of Environmental Quality" for the proposed rule and remains applicable to this final rule. It is available for public inspection in the Office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, during normal business hours.

This rule is not listed in the Department's semiannual agenda of significant rules, published pursuant to Executive Order 12044. Accordingly, 24 CFR 3282.356(e) is added as follows:

§ 3282.356 Disqualification and requalification of primary inspection agencies.

* * * * *

(e) Both provisional and final acceptance of any IPIA (or DAPIA) automatically expires at the end of any period of one year during which it has not acted as an IPIA (or DAPIA). An IPIA (or DAPIA) has not acted as such unless it has actively performed its services as an IPIA (or DAPIA) for at least one manufacturer by which it has been selected. An IPIA (or DAPIA) whose acceptance has expired pursuant to this section may resubmit an application under § 3282.353 in order to again be qualified as an IPIA (or DAPIA), when it can show a bona fide prospect of performing IPIA (or DAPIA) services.

(Sec. 625, National Mobile Home Construction and Safety Standards Act of 1974, (42 U.S.C. 5424); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)))

Issued at Washington, D.C., September 2, 1980.

Geno C. Baroni,

Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.

[FR Doc. 80-27644 Filed 9-8-80; 8:45 am]

BILLING CODE 4210-01-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Eligibility for Vocational Rehabilitation and Educational Assistance—Character of Discharge

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration is amending its regulations concerning eligibility for vocational rehabilitation and educational assistance under chapters 31 and 34, title 38, United States Code. These changes are necessary in order to implement a law enacted October 8, 1977. Most of the changes are of a minor technical nature. The regulatory amendments will implement the provisions of the law.

EFFECTIVE DATE: October 8, 1977.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education and Rehabilitation Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202-389-2092).

SUPPLEMENTARY INFORMATION: On pages 2667 through 2669 of the Federal Register of January 14, 1980, there was published a notice of intent to amend part 21 to provide methods for determining the eligibility for vocational rehabilitation and educational assistance of people who completed satisfactorily their period of obligated military service; to provide for determining the eligibility period for those persons who became eligible for benefits under chapter 34, title 38, United States Code, as a result of Pub. L. 95-126 (91 Stat. 1106) and liberalized §§ 3.12 and 3.13, Title 38, Code of Federal Regulations; and to clarify that once an eligible veteran is released from active duty he or she will have no more than 10 years in which to use his or her entitlement to educational assistance under chapter 34, title 38, United States Code.

Interested persons were given 30 days in which to submit comments,

suggestions, or objections regarding the proposal. The Veterans Administration received two letters containing comments and suggestions.

One writer correctly deduced that the regulatory amendments would allow some veterans with dishonorable discharges to receive educational assistance. He objected, stating that this would negate the military's attempt to differentiate between those whose service deserves recognition and those whose service does not deserve this recognition.

The Veterans Administration appreciates the viewpoint of this veteran. Nevertheless, it has decided not to change the policy reflected in these regulations. The regulations follow logically from the provisions of section 101(18), title 38, United States Code.

That section states, in part, "The term 'discharge or release' includes * * * the satisfactory completion of the period of active military naval or air service for which a person was obligated at the time of entry into such service in the case of a person who, due to enlistment or reenlistment, was not awarded a discharge or release from such period of service at the time of * * * completion * * * and who * * * would otherwise have been eligible for the award of a discharge or release under conditions other than dishonorable." Hence, any veteran who satisfactorily completed his or her initial period of obligated service would be eligible for educational assistance (if everything else were in order) even if the veteran eventually received a dishonorable discharge at the end of a subsequent period of service.

One commenter objected to the idea of requiring veterans to use their educational benefits during a fixed time period. He suggested that this program should be open-ended.

While the Veterans Administration can understand the desire of veterans to use their benefits throughout their lifetimes, this also is not permitted by law. Section 1661, title 38, United States Code, generally limits veterans to 10 years in which to use their benefits and provides that no benefits may be paid after December 31, 1989. Therefore, the agency has not adopted the suggestion.

The Veterans Administration analyzed these regulations internally after they were proposed. The agency concluded that the paraphrase of § 3.13 of this chapter contained in the original proposal might mislead some readers into thinking that the policy being implemented with regard to educational benefits is different from that being implemented with regard to compensation and pension benefits. This is not the case. Accordingly, the proposal has been rewritten to make direct reference to § 3.13.

Furthermore, references to the veteran's completing an initial period of obligated service have been replaced with references to completion of any period of obligated service. The agency believes that the word "initial" is to restrictive and not in keeping with the intent of the law.

The changes to §§ 21.40, 21.42, 21.1040, 21.1042 and 21.4131 are deemed proper and hereby approved.

Approved: August 28, 1980.

By direction of the Administrator:

Rufus H. Wilson,
Deputy Administrator.

Subpart A—Vocational Rehabilitation Under 38 U.S.C. Ch. 31

1. In § 21.40, paragraph (b) is revised to read as follows:

§ 21.40 Basic eligibility.

* * * * *

(b) *Discharge or release.* (1) The veteran must have received an unconditional discharge or release from active service under conditions other than dishonorable.

(2) The Veterans Administration will consider that the veteran has received an unconditional discharge or release if—

(i) The veteran was eligible for complete separation from active duty on the date a discharge or release was issued to him or her, or

(ii) The provisions of § 3.13(c) of this chapter are met. See also § 3.12 of this chapter on character of discharge. (38 U.S.C. 101)

* * * * *

2. In § 21.42, footnote [1] is revised to read as follows:

§ 21.42 Dates of eligibility.

* * * * *

[1] Date of discharge refers to the first unconditional discharge or release under conditions other than dishonorable following the period of service in which the disability occurred. If the unconditional discharge or release was under dishonorable conditions, date of discharge refers to the last date of the satisfactorily completed period of obligated active service during which the disability occurred.

* * * * *

Subpart B—Veterans' Educational Assistance Under 38 U.S.C. Chapter 34

3. In § 21.1040, paragraph (d) is revised to read as follows:

§ 21.1040 Basic eligibility.

* * * * *

(d) *Discharge or release.* (1) The veteran must have received an unconditional discharge or release under conditions other than dishonorable from the period of service on which eligibility is based.

(2) The Veterans Administration will consider that the veteran has received an unconditional discharge or release if

(i) The veteran was eligible for complete separation from active duty on the date a discharge or release was issued to him or her, or

(ii) The provisions of § 3.13(c) of this chapter are met. See also § 3.12 of this chapter on character of discharge. (38 U.S.C. 101)

4. In § 21.1042, paragraph (a) is revised, new paragraphs (d) and (e) are added and the former paragraphs (d) and (e) are redesignated (f) and (g) so that the added and revised material reads as follows:

§ 21.1042 Ending dates of eligibility.

The ending date of eligibility will be determined as follows:

(a) General. Except as otherwise provided in this section and as provided by §21.1043, no educational assistance will be afforded a veteran later than 10 years after his or her last discharge or release from active duty after January 31, 1955 or December 31, 1989, whichever is the earlier. (38 U.S.C. 1662)

* * * * *

(d) *Eligibility based on completion of an obligated period of active duty.* A veteran's eligibility may be based solely on a completion of an obligated period of active duty followed by discharge considered to be unconditional under § 3.13(c) of this chapter. When this occurs, the Veterans Administration shall not afford the veteran an educational assistance allowance after October 8, 1987 or 10 years after the veteran completed the qualifying period of active duty unless the veteran qualified for a later ending date pursuant to § 21.1043. In no event, however, shall the Veterans Administration furnish educational assistance allowance after December 31, 1989. (38 U.S.C. 101, 1662)

(e) *Eligibility established after the Veterans Administration determines the character of discharge.* If a veteran receives an undesirable discharge, or a bad conduct discharge, but is entitled to educational assistance allowance because the Veterans Administration determines pursuant to § 3.12 of this chapter that the discharge was under conditions other than dishonorable, the last date on which educational allowance may be afforded shall be determined as follows:

(1) If the veteran's discharge is under other than dishonorable conditions pursuant to § 3.12 of this chapter as that section was written and interpreted on the date the veteran was discharged, no educational assistance shall be afforded after the dates set forth in paragraph (a) or (c) of this section, as appropriate.

(2) If the veteran was discharged prior to October 8, 1977, and his or her

discharge is considered to have been under dishonorable conditions pursuant to § 3.12 of this chapter as that section was written and interpreted on the date of his or her discharge, but is considered to have been under other than dishonorable conditions pursuant to § 3.12 of this chapter as that section was written and interpreted after October 7, 1977, educational assistance shall not be afforded after October 7, 1987 unless the veteran qualifies for a later date pursuant to § 21.1043. In no event, however, shall such a veteran receive educational assistance allowance after December 31, 1989.

(3) A veteran may have his or her eligibility arise under paragraph (b) of this section, and then lose eligibility under that paragraph, because a later review by an appropriate military authority revealed that the change, correction or modification was not in accordance with historically consistent, uniform standards and procedures. If such a veteran having been in receipt of educational assistance, reestablishes his or her eligibility through the Veterans Administration's determination that the veteran's discharge was under conditions other than dishonorable, no educational assistance shall be afforded later than:

(i) Ten years from the date of discharge or dismissal if the veteran's discharge would have been considered to have been under other than dishonorable conditions pursuant to § 3.12 of this chapter as that section was written and interpreted on the date he or she was discharged or dismissed.

(ii) Ten years from the first date of training for which the veteran received educational assistance if the veteran's discharge or dismissal would have been considered to have been under dishonorable conditions pursuant to § 3.12 of this chapter as that section was written on the date the veteran was discharged or dismissed, but is considered to have been under conditions other than dishonorable pursuant to § 3.12 of this chapter as that section was written after October 7, 1977. In no event, however, shall such a veteran receive educational assistance allowance after December 31, 1989. (38 U.S.C. 1662, 3103)

(f) *Discontinuance.* If the veteran is pursuing a course on the date of expiration of eligibility as determined under this section, the educational assistance allowance will be discontinued effective the day preceding the end of the 10-year period, or December 31, 1989, whichever is the earlier. (38 U.S.C. 1662)

(g) *Periods excluded.* There shall be excluded in computing the 10-year period of eligibility for educational assistance under this section, any period during which the eligible veteran subsequent to his or her last discharge or release from active duty was captured and held as a prisoner of war by a foreign government or power plus any period immediately following the veteran's release from detention during which he or she was hospitalized at a military, civilian, or Veterans Administration medical facility, provided:

(1) The veteran served on or after February 1, 1955, and

(2) The veteran was eligible for educational assistance under the provisions of chapter 34 of chapter 36 of title 38, United States Code. (38 U.S.C. 1662)

Subpart D—Administration of Educational Benefits: 38 U.S.C. Chapters 34, 35, and 36

5. In § 21.4131, paragraph (g) is revised to read as follows:

§ 21.4131 Commencing dates.

* * * * *

(g) *Correction of military records (§§ 21.1042(b), 21.3042(b)).* Where eligibility of a veteran arises as the result of correction or modification of military records under 10 U.S.C. 1552 or change, correction or modification of a discharge or dismissal pursuant to 10 U.S.C. 1553, or other competent military authority, the commencing date of educational assistance allowance which is otherwise payable will be in accordance with the facts found, but not earlier than the date the change, correction or modification was made by the service department. (38 U.S.C. 1662(b))

(38 U.S.C. 210(c))

[FR Doc. 80-27363 Filed 9-8-80; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-1600-6]

Revision to the New Hampshire State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On April 11, 1980 (45 CFR 24869) the Environmental Protection Agency (EPA) promulgated conditions on its approval of the New Hampshire State Implementation Plan (SIP). Among the conditions was a requirement that the state submit a SIP revision for public, local and state involvement in federally supported air pollution control activities and an analysis and public comment on the SIP revisions promulgated on April 11, 1980. These revisions were received on February 28, 1980.

EFFECTIVE DATE: October 9, 1980.

ADDRESSES: Copies of the State's submission are available for inspection at the following addresses: Environmental Protection Agency, Air Branch, Room 1903, J.F.K. Federal Building, Boston, MA 02203; Air Resources Agency, State Laboratory Building, Hazen Drive, Concord, NH 03301.

FOR FURTHER INFORMATION CONTACT: Gail Petersen, Public Participation Coordinator, Office of Public Awareness, Environmental Protection Agency, Region I, J.F.K. Federal Building, Room 2203, Boston, MA 02203, (617) 223-0967.

SUPPLEMENTARY INFORMATION: On April 11, 1980 (45 CFR 24869) the EPA promulgated conditions on its approval of the New Hampshire SIP. Among the conditions was a requirement that the state submit a SIP revision for public, local and state involvement in federally supported air pollution control activities and an analysis and public comment on the SIP revisions promulgated on April 11, 1980. These revisions were received on February 28, 1980. That Notice stated that EPA would approve the New Hampshire SIP revisions conditioned upon submittal by March 31, 1980, of: an analysis and public comment on the health, welfare, air quality, economic, energy and social effects of the plan adopted on April 11, 1980, and, a long-term plan for public participation as contained in the grant conditions on the New Hampshire fiscal year 1980 program grant under section 105 of the Clean Air Act.

New Hampshire's February 28 submittal included the following elements:

a. Description of resources.

b. A commitment to an annual work plan for public participation and subsequent evaluation of this plan.

c. An identification of interested and affected constituencies, and a summary of how the issues could affect them.

d. A listing of public participation objectives for each issue.

e. A listing of specific techniques to be employed to satisfy each objective.

f. A commitment to an evaluation procedure, to be developed by EPA, and a summary of A-95 and other public comments.

g. Provisions for compliance with the Public Notification (section 127) Guidelines.

Based on its review of the submitted document, EPA finds that the condition it promulgated on the New Hampshire SIP has been fully met. Therefore, EPA is incorporating the changes into the SIP and revoking the applicable condition. Furthermore, this action serves to continue EPA's conditional approval.

EPA finds that further notice and comment on these issues are unnecessary (see 5 U.S.C. section 553(b)(B)—the Administrative Procedure Act) insofar as the corrective action was clearly identified in EPA's promulgation and the State's submittal clearly addresses the specified criteria for approval.

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 110 of the Clean Air Act, as amended)

Dated: September 2, 1980.

Douglas M. Costle,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart EE—New Hampshire

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

1. Section 52.1520, paragraph (c), is amended by adding paragraph (15) as follows:

§ 52.1520 Identification of plan.

(c) * * *

(15) A plan to provide comprehensive public participation and an analysis of the effects of the New Hampshire 1979 SIP revisions were submitted on February 28, 1980.

§ 52.1527 [Amended]

2. Section 52.1527, rules and regulations is amended by revoking paragraphs (a)(4) and (a)(5).

[FR Doc. 80-27608 Filed 9-8-80; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 52

[FRL 1601-2]

Revision to the Maine State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On February 19, 1980 (40 CFR 10766) the Environmental Protection Agency (EPA) promulgated conditions on its approval of the Maine State Implementation Plan (SIP). One condition was a requirement that the state submit a SIP revision of a comprehensive plan to involve the public in federally funded air pollution control activities by March 31, 1980. The revision was submitted on May 28, 1980.

EFFECTIVE DATE: October 9, 1980.

ADDRESSES: Copies of the State's submission are available for inspection at the following addresses: Environmental Protection Agency, Air Branch, Room 1903, J.F.K. Federal Building, Boston, MA 02203; Bureau of Air Quality Control, State House, Augusta, Maine 04330.

FOR FURTHER INFORMATION CONTACT: Gail Petersen, Public Participation Coordinator, Office of Public Awareness, Environmental Protection Agency, Region I, J.F.K. Federal Building, Room 2203, Boston, MA 02203, (617) 223-0967.

SUPPLEMENTARY INFORMATION: On February 19, 1980 (40 CFR 10766) the EPA promulgated conditions on its approval of the Maine SIP. One condition was a requirement that the state submit a SIP revision of a comprehensive plan to involve the public in federally funded air pollution control activities by March 31, 1980. The revision was submitted on May 28, 1980.

The February 19, 1980 Notice stated that EPA would approve the Maine SIP revisions conditioned upon compliance with conditions attached to a grant received by Maine under control activities of the Clean Air Act. These grant conditions included a comprehensive plan for public participation and the identification of a skilled public participation staff person to have overall responsibility for carrying out an effective public participation program.

Maine has submitted a SIP revision containing a commitment to the development of an annual comprehensive plan for public participation. The submittal also identified a public participation staff person and described the resources to be allocated to the public participation program. The state is currrently developing its public participation plan.

Based on its review of the submitted document, EPA finds that the condition it promulgated on the Maine SIP has been fully met. Therefore, EPA is incorporating the changes into the SIP and revoking the applicable condition. Furthermore, this action serves to continue EPA's conditional approval.

EPA finds that further notice and comment on these issues are unnecessary (see 5 U.S.C. Section 553(b)(B)—the Administrative Procedure Act) insofar as the corrective action was clearly identified in EPA's promulgation and the State's submittal clearly addresses the specified criteria for approval.

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This rulemaking action is issued under the authority of Section 110 of the Clean Air Act, as amended.

Dated: September 2, 1980.

Douglas M. Costle,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart U—Maine

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

1. In Section 52.1020, paragraph (c) is amended by adding paragraph (12) as follows:

§ 52.1020 Identification of plan.

(c) * * *

(12) A plan to provide for public involvement in federally funded air pollution control activities was submitted on May 28, 1980.

§ 52.1027 [Amended]

2. Section 52.1027, *Rules and Regulations*, is amended by deleting paragraph (a)(2).

[FR Doc. 80-27613 Filed 9-8-80; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 52

[FRL 1601-3]

Revision to the Vermont State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On February 19, 1980 (40 CFR 10775) the Environmental Protection Agency (EPA) promulgated a condition on its approval of the Vermont State

Implementation Plan (SIP). The one condition was a requirement that the state submit a SIP revision of a comprehensive plan to involve the public in federally funded air pollution control activities by March 31, 1980. The revisions were submitted on March 28, 1980.

EFFECTIVE DATE: October 9, 1980.

ADDRESSES: Copies of the State's submission are available for inspection at the following addresses: Environmental Protection Agency, Air Branch, Room 1903, J.F.K. Federal Building, Boston, MA 02203; Air and Solid Waste Program, Agency for Environmental Conservation, State Office Building, Montpelier, VT 05602.

FOR FURTHER INFORMATION CONTACT: Gail Petersen, Public Participation Coordinator, Office of Public Awareness, Environmental Protection Agency, Region I, J.F.K. Federal Building, Room 2203, Boston, MA 02203, (617) 223-0967.

SUPPLEMENTARY INFORMATION: On February 19, 1980 (40 CFR 10775) the EPA promulgated a condition on its approval of the Vermont SIP. The one condition was a requirement that the state submit a SIP revision of a comprehensive plan to involve the public in federally funded air pollution control activities by March 31, 1980. The revisions were submitted on March 28, 1980.

The February 19, 1980 Notice stated that EPA would approve the Vermont SIP revisions conditioned upon submittal, by March 31, 1980, of a comprehensive plan for continuing public participation.

The March 28 SIP submittal included the following elements:

1. A description of resources.
2. A commitment to an annual work plan for public participation and subsequent evaluation of this plan.
3. An identification of major program issues.
4. An identification of interested and affected constituencies, and a summary of how the issues could affect them.
5. A listing of public participation objectives for each issue.
6. A listing of specific techniques to be employed to satisfy each objective.
7. A commitment to utilize an evaluation procedure, to be developed by EPA, and a summary of A-95 and other public comments.
8. Provisions for compliance with the Public Notification (Section 127) Guidelines.

Based on its review of the submitted document, EPA finds that the condition it promulgated on the Vermont SIP has been fully met. Therefore, EPA is incorporating the change into the SIP and revoking the applicable condition. This action serves to fully approve Vermont's SIP revisions.

EPA finds that further notice and comment on these issues are unnecessary (see 5 U.S.C. Section 553(b)(B)—the Administrative Procedure Act) insofar as the corrective action was clearly identified in EPA's promulgation and the State's submittal clearly addresses the specified criteria for approval.

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This rulemaking action is issued under the authority of Section 110 of the Clean Air Act, as amended.

Dated: September 2, 1980.

Douglas M. Costle,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart UU—Vermont

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

1. In Section 52.2370, paragraph (c) is amended by adding subparagraph (11) as follows:

§ 52.2370 Identification of plan.

(c) * * *

(11) A plan to provide for public, local and state involvement in federally funded air pollution control activities was submitted on March 28, 1980.

§ 52.2382 [Amended]

2. In Section 52.2382, *Rules and Regulations,* paragraph (a) is hereby revoked and paragraph (b) is renumbered to (a).

[FR Doc. 80-27814 Filed 9-8-80; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 81

[FRL 1584-5]

Designation of Areas for Air Quality Planning Purposes; Redesignation of Attainment Status: Nevada and California

AGENCY: Environmental Protection Agency.

ACTION: Correction.

SUMMARY: The Environmental Protection Agency takes action to correct a clerical error made in an earlier final rulemaking Federal Register notice concerning redesignations of attainment status in Nevada and California. The document revising 40 CFR Part 81 published in the Federal Register on July 11, 1980, as 45 FR 46807 is corrected by changing the reference to Santa Clara County's attainment status designation in § 81.305 from "Does not meet primary standards" to "Does not meet secondary standards" for the Total Suspended Particulate standard.

DATES: Effective July 11, 1980.

FOR FURTHER INFORMATION CONTACT: Louise P. Giersch, Director, Air and Hazardous Materials Division, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105. Attn: Morris Goldberg (415) 556-8065.

SUPPLEMENTARY INFORMATION: On July 11, 1980 (45 FR 46807) EPA took final action to approve revisions to attainment status designations in the states of Nevada and California. A clerical error was in that notice, resulting in designation of Santa Clara County as "Does not meet primary standards" for Total Suspended Particulates (TSP). This action corrects that clerical error and reinstates the designation of "Does not meet secondary standards" for TSP.

Specifically, in FR Doc. 80-20701 appearing at page 46807 in the July 11, 1980 Federal Register, in the TSP table for California, the row concerning Santa Clara County is corrected by moving the "x" from the column "Does not meet primary standards" to the column "Does not meet secondary standards."

Since this notice does not impose any new requirements and merely corrects a clerical error made in the July 11, 1980 Federal Register notice, the effective date of this correction is July 11, 1980.

Dated: September 2, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 80-27810 Filed 9-8-80; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 81

[FRL 1600-4]

Designation of Areas for Air Quality Planning Purposes; Section 107—Nonattainment Status Designation—Montana

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This notice revises the National Ambient Air Quality Standards (NAAQS) attainment status of the portion of the Great Falls area requested by the Montana State Air Quality Bureau from attainment to nonattainment for carbon monoxide (CO). During the period July, 1977 to February, 1979, there were 16 violations of the eight hour CO standard at the one monitoring station in Great Falls.

EFFECTIVE DATE: September 9, 1980.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Alkema, Coordinator, Environmental Protection Agency, Montana Office, Federal Building, Drawer 10096, 301 South Park, Helena, Montana 59601. Telephone (406) 449–5414.

SUPPLEMENTARY INFORMATION: EPA finds good cause exists for making the action taken in this notice immediately effective for the following reasons: (1) this action merely identifies a problem area for air quality planning purposes; (2) this action imposes no additional obligation on any source; (3) development of a plan to attain the CO standard within the designated area must begin immediately in order to protect the public health.

The Clean Air Act Amendments of 1977, Pub. L 95–95, added Section 107(d)(2) to the Clean Air Act (CAA), which directed each State to submit to the Administrator of the EPA a list of the NAAQS attainment status of all areas within the State. The Administrator was required under Section 107(d)(2) to promulgate the State lists, with any necessary modifications.

For each NAAQS, areas are classified as (1) not attaining the standard or, for certain pollutants, projected not to maintain the standard (nonattainment areas), (2) meeting the standard (attainment areas), or (3) lacking sufficient data or information to be classified (unclassified areas). The EPA published these lists on March 3, 1978 (43 FR 8962). At that time, the Great Falls area was classified as attainment for CO.

On December 24, 1979, the State of Montana requested EPA to redesignate a portion of the City of Great Falls from attainment to nonattainment for CO. In the March 28, 1980, Federal Register (45 FR 20501) EPA proposed to modify the State's request and redesignate the entire city as a nonattainment area. A 30 day comment period was provided. This was subsequently extended to May 31, 1980 (45 FR 34020, May 21, 1980), to provide additional time for the City of Great Falls to submit its comments. A meeting was scheduled in Great Falls on May 20, 1980, to receive comments from city officials, but because of dust entering Montana from the Mt. St. Helens volcano eruption, all nonessential activities were ordered to be curtailed by the Governor, and the meeting was cancelled. The meeting was rescheduled for June 5, 1980, the earliest date which was mutually acceptable to city officials, EPA, and State personnel, and was announced in the *Great Falls Tribune* on June 3, 1980.

EPA believes that the comments submitted by the city as a result of that meeting are eligible for inclusion as official comments for the following reasons: (1) the May 20, 1980, meeting was specifically requested by Great Falls city officials to afford them the opportunity to provide EPA with comments, but was cancelled because of the natural disaster at Mt. St. Helens. The same personnel attended the meeting on June 5, 1980, as would have on May 20, 1980, and no one wanting to attend the meeting was excluded; (2) the second meeting date (June 5, 1980) was announced in an article in the *Great Falls Tribune* on June 3, 1980. This afforded the public an opportunity to learn of the meeting, to attend if desired, or to contact the city to propose a revised date for the meeting; and (3) if any other comments had been submitted by June 5, 1980, EPA would have considered them in developing the final rule.

Detailed Comments

Major concerns raised by the City of Great Falls (hereafter the "city") in its verbal and written communications with EPA, together with EPA's responses to those concerns are contained in the following paragraphs.

The city contends that it has no CO problem and that the data utilized by the EPA is invalid because the analyzer used was not equivalent according to EPA standards under 40 CFR Part 58. However, EPA found the analyzer equivalent because the unit referenced by the city (Bendix Model 8501–5CA) was designated as a reference analyzer on February 18, 1976, and remains so to this date. The Montana Air Quality Bureau has verified that a Bendix 8501–5CA was used to collect the data. As stated earlier in this notice, these data showed 16 violations of the eight-hour CO standard.

The city also stated that the monitor was not sited according to EPA siting criteria. The monitor in the city was sited according to existing EPA criteria. These criteria are contained in *EPA—450/3–75–007, Selecting Sites for Carbon Monoxide Monitoring, September, 1975.* This publication was used in developing the CO siting criteria set forth in 40 CFR Part 58. The criteria in this latter document, although abbreviated, are not substantively different from those set forth in the earlier document. Furthermore, the city contends that the ambient temperature inversions and heavy traffic flows should be considered as mitigating factors in judging the data for violations. It is EPA's position that temperature inversions and heavy traffic on 10th Avenue South cannot be considered as mitigating factors. Adverse meteorological conditions are certain to occur as part of the normal climatological cycle. Temperature inversions are fairly frequent in Great Falls during the winter months. Similarly, since motor vehicle traffic generates roughly 85 to 95 percent of all CO found to occur in a community such as Great Falls, it would not be logical to exclude that source from consideration. Rather, it is precisely because these factors combine to result in high CO concentrations that the public health must be protected from the results of such events.

The city has incorrectly stated that because the Montana Air Quality Bureau characterized the Great Falls monitoring site as microscale, the data from it should not be used for purposes of redesignation. Congressman Williams also commented that the data from the microsite is insufficient to justify a designation of the entire city and that other evidence is needed before a designation is made. Data from any scale site can be used to designate an area as nonattainment, be it microscale, middlescale, neighborhood scale or other scale. The important thing is that the public has access to the area in the vicinity of the monitor. In this case, there are a number of small businesses adjacent to the monitoring site, and there are residences on 9th Avenue South within 50 to 75 meters of it. Moreover, using the criteria set forth in 40 CFR Part 58, a case could be made for characterizing the Great Falls site as middlescale rather than microscale.

The city also argues that EPA is unjustified in redesignating the entire city based on the data from one monitoring site. EPA agrees that, ideally, data from more than one monitor would be desirable for designation purposes. However, because of the high cost of operating large CO monitoring networks, EPA recommends that limited monitoring networks be used, even in large metropolitan areas. EPA also recommends that monitoring efforts be supplemented by diffusion modeling techniques to estimate CO

concentrations at other locations within the community.

In the case of Great Falls, there are two areas where violations of the CO standards could be expected to occur. These are the 10th Avenue South corridor where the monitored violations occurred, and another area some distance away which corresponds roughly to the central business district. Neither monitoring nor modeling data exist for this latter area. However, transportation planning data developed by the city indicate that there are some intersections and street segments in the vicinity of the central business district which experience relatively high traffic volumes and low travel speeds. EPA believes that these segments and intersections need to be analyzed for potential standards violations. Therefore, in recognition of the lack of monitoring or modeling data for the central business district, EPA is reducing the size of the nonattainment area to that described in the following section.

EPA Action

EPA is limiting the designation to the following subarea of Great Falls: that area between 9th Avenue South on the north, and 11th Avenue South on the south, and between 2nd Street on the west and 54th Street on the east. This is the area originally recommended for nonattainment status by the State Air Quality Bureau.

In addition to the nonattainment area, the following study area is hereby identified: beginning at the intersection of 2nd Street and 2nd Avenue South, then east on 2nd Avenue South to 15th Street, then north on 15th Street to North River Road, then west on North River Road to 10th Street, then south on 10th and subsequently 9th Street to 8th Avenue North, then west on 8th Avenue to Park Drive, then southwest on Park Drive to 3rd Avenue North, then south on 1st Street to 1st Avenue South, then east on 1st Avenue to 2nd Street, then south on 2nd Street to the point of beginning.

Within the study area, and as part of the development of its Transportation Control Plan, the city will analyze certain street intersections and street segments for violations of the CO standards. The analyses are to be conducted according to procedures acceptable to the State in consultation with EPA. The current "Transportation System Management" (TSM) report prepared by Great Falls shall be used to select the intersections and street segments. The worst intersections and segments in terms of volume-capacity ratios and slow travel speed shall be analyzed first, proceeding on to those segments and intersections which have improved volume-capacity ratio and higher travel speeds. When enough intersections have been analyzed to ensure that the analysis of additional segments and intersections will not result in any more predicted violations, the process will be discontinued. The decision to discontinue the analytical procedure shall be made by the State Air Quality Bureau in consultation with EPA.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this final rulemaking is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of (date of publication). Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of this notice may *not* be challenged later in civil or criminal proceedings brought by the Environmental Protection Agency (EPA) to enforce these requirements.

(Sec. 107 of the Clean Air Act as amended)

Dated: September 2, 1980.

Douglas M. Costle,

Administrator.

Title 40, Part 81 of the Code of Federal Regulations is amended as follows:

In § 81.327 the attainment status designation table for CO is revised to read as follows:

§ 81.327 Montana.

* * * * * * *

Montana—CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
City of Billings	[1]X	
City of Missoula	X	
Great Falls Designated Area	X	
Rest of State		X

[1] EPA designation replaces State designation.

* * * * * * *

[FR Doc. 80-27607 Filed 9-8-80; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 122

[FRL 1600-8]

Consolidated Permit Regulations; Criteria for New Source Determinations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Suspension of portion of final rule.

SUMMARY: This action suspends a portion of the criteria for National Pollutant Discharge Elimination System (NPDES) new sourced determinations in the consolidated permit regulations pending further rulemaking.

EFFECTIVE DATE: September 9, 1980.

FOR FURTHER INFORMATION CONTACT: Robert Brook, Permits Division (EN-336), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. (202) 755-0750.

SUPPLEMENTARY INFORMATION: On May 19, 1980, EPA issued final consolidated permit regulations under the Clean Water Act and other statutes. Those regulations included a provision containing criteria for distinguishing construction of a new source at the site of an existing source from construction that merely modified the existing source. 40 CFR § 122.66(b) (1) and (2). Classification as a new source depended in part on whether the construction involved a new "building, structure, facility, or installation." Following promulgation of the regulations, discussions with several regional permit writers raised questions about how the

provision would actually operate, particularly as applied to industries in which virtually each piece of new equipment may constitute a separate structure or building.

Because of the confusion generated by this language, we have decided that the regulation should be carefully re-examined. Accordingly, EPA is today suspending the effectiveness of § 122.66(b) (1) and (2). During the period of suspension, permit writers will use Appendix A to Subpart I, 40 CFR Part 6 (1979), Guidance on Determining a New Source, as guidance for determinations otherwise controlled by § 122.66(b) (1) and (2). EPA also is today publishing elsewhere in the Federal Register a proposed revision of this rule for public comment. At the end of that rulemaking, we will amend the rule or terminate the suspension.

§ 122.66 [Amended]

In 40 CFR § 122.66, paragraphs (b)(1) and (b)(2) are suspended until further notice.

Dated: September 2, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 80-27611 Filed 9-8-80; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 400

Refugee Resettlement Program; Plan and Reporting Requirements for States

AGENCY: Office of the Secretary (OS), HHS.

ACTION: Final rule.

SUMMARY: This regulation sets forth the plan requirements a State must meet as a condition for receiving assistance for refugees under title IV of the Immigration and Nationality Act. It also includes requirements for the establishment of advisory councils to participate in the implementation of the plan, the content of the State annual reports on the use of refugee resettlement program funds, and maintenance of records. This regulation implements section 412(a)(6) of the Immigration and Nationality Act (added by section 311(a)(2) of the Refugee Act of 1980). It requires a State, as a condition for receiving assistance for refugees, to submit to the Office of Refugee Resettlement (ORR) (1) a plan that provides details of the State's program for delivering assistance and services funded by ORR, and (2) an annual report, after the end of each fiscal year, on the use of State-administered Federal funds provided under the program. State plans must be submitted by October 1, 1980; the first annual report is due by December 31, 1980; advisory councils must be established by January 1, 1981.

EFFECTIVE DATE: October 1, 1980.

FOR FURTHER INFORMATION CONTACT: Dennis Gallagher (202) 426-6510.

SUPPLEMENTARY INFORMATION: Notice of proposed rulemaking was published on May 27, 1980, in the Federal Register (45 FR 35359), setting forth plan and reporting requirements for States under the Refugee Resettlement Program. The purpose of the regulation is to set forth requirements for, and to provide guidance to States on, the content of their plans due to ORR by October 1, 1980. No major changes were made in the proposed regulation.

The basis of the regulation is section 311 of Pub. L. 96-212 (the Refugee Act of 1980) which amended title IV of the Immigration and Nationality Act to establish the Office of Refugee Resettlement (ORR) in HHS. This regulation implements section 412(a)(6) of the Immigration and Nationality Act. That section, added by section 311(a)(2) of the Refugee Act of 1980, requires States, as a condition for receiving refugee assistance, to—

(1) Submit a plan to the Director of ORR;

(2) Meet standards, goals, and priorities, developed by the Director of ORR, which assure the effective resettlement of refugees and which promote their economic self-sufficiency expeditiously and the efficient provision of services; and

(3) Submit to the Director, after the end of the fiscal year, a report on the uses of resettlement funds administered by the State.

Under section 313(d) of the Refugee Act of 1980, the requirements for a plan apply to assistance furnished after October 1, 1980. The regulation sets forth (1) the plan requirements contained in the statute; (2) the requirement for establishing a State advisory council to participate in the development and review of plan amendments submitted to ORR; (3) the required content of the annual State reports on the uses of Federal funds provided for refugee assistance; and (4) the requirement for maintenance of records. The statute requires the plan to:

(1) describe how the State plans to encourage effective refugee resettlement and promote economic self-sufficiency;

(2) describe how the State plans to insure that language training and employment services will be made available to refugees receiving cash assistance;

(3) designate a State coordinator for refugee resettlement;

(4) provide for the care and supervision of unaccompanied refugee children; and

(5) Provide for the identification and necessary treatment or observation of refugees with medical conditions requiring attention and monitoring of such treatment or observation.

Over the next year we intend to develop comprehensive regulations governing the refugee resettlement program after consultation with States, private voluntary resettlement organizations, refugees and their representatives, and others. After a thorough examination of the legislation and current program policy as well as these various consultations, we will issue program regulations to implement the law effectively. Complete program regulations should be in place before the beginning of FY 1982.

Given the limited time frame between passage of the statute and the October 1, 1980 due date for plans, this regulation is intended to provide States with as much advance notice and guidance as possible on the required content of the plan and annual reports, as well as maintenance of records requirements. Further revision of these requirements may be necessary in connection with program regulations to be developed and published over the next year.

Section 301 of the Refugee Act of 1980 amends section 101(a) of the Immigration and Nationality Act by adding a new definition of the term "refugee." The Department of Justice, which is charged with determining the admission of refugees and providing appropriate documentation, published interim regulations covering these matters in the Federal Register (45 FR 37392) on June 2, 1980, which identify aliens who are refugees under section 207 or section 208 of the Immigration and Nationality Act. Also, under current policy, individuals who would have met the definition of a "refugee" under the Migration and Refugee Assistance Act of 1962, as amended, or the Indochina Refugee Assistance Act of 1975, as amended, will also meet the definition of a refugee under the Refugee Resettlement Program. ORR will issue guidance to State agencies and other service providers on the identification and documentation of refugees.

Discussion of Comments

We received 61 letters from State and local government agencies, voluntary resettlement agencies, other public and private nonprofit agencies, service providers, refugee community groups and mutual assistance associations, and refugees themselves. Specific major concerns expressed and our responses are as follows:

1. Comments that go beyond the scope and intent of this regulation.

We received 13 comments that included suggestions for additions to the regulation that go beyond the limited scope of this regulation. Several commenters requested that we require plans to include research and evaluation of State planning objectives and services provided to refugees, as well as specific time lines for achieving objectives. One State agency requested that there be some provision in the regulation for public review of the plan in addition to State advisory council review.

In addition, we received extensive comments from several States, community groups and service providers offering suggestions on methods of service delivery. For example, two commenters wanted the regulation to require provision of services through the use of bilingual/bicultural staff when contact with refugees is part of the service delivery methodology. We received comments on methods and outreach techniques for assuring maximum use and benefits from language training and employment services as well as the need to provide skills and language training simultaneously.

Several respondents were concerned about the lack of requirements placed on voluntary resettlement agencies. Other respondents expressed concern that the regulation does not address a preventive program in mental health, and that reference to the unaccompanied refugee children program is limited.

We recognize the need to address additional concerns in developing program regulations and appreciate the careful thought that went into the comments we received. The present regulation, however, is limited to plan and reporting requirements that must be met by October 1, 1980, and minimum maintenance of records requirements. The regulation is applicable to State programs for refugee resettlement and sets forth the basic requirements States must meet as a condition for receiving Federal funds under title IV of the Immigration and Nationality Act.

We will be publishing proposed regulations for State programs for cash assistance, medical assistance, child welfare services (including services for unaccompanied refugee children), support services, and grants to public and private nonprofit agencies. We will consider the above comments and suggestions, plus other comments discussed under specific sections, in developing those regulations.

However, we want to clarify that this regulation is applicable to voluntary resettlement agencies or other private agencies only to the extent that they receive HHS funds through the States under this Act. To the extent that voluntary resettlement agencies receive reception and initial placement grants from the Department of State, we have neither the authority nor the responsibility to regulate such grants.

We realize that this regulation cannot meet the concerns of all commenters. Therefore, we plan extensive public participation in the subsequent regulations development process planned during FY 1981. In addition, we will be providing technical assistance and guidance to help assure that programs are developed to best meet refugees' needs.

2. English language training and employment services.

We received five comments on the Director's establishing the provision of English language training and employment services as a priority in accomplishing the purposes of the program (section 400.1 (c)). One commenter strongly endorsed setting those priorities but wanted to add a work-search requirement as a condition for receiving assistance to further strengthen this commitment. We will consider such a requirement in developing regulations governing State programs for cash assistance to refugees. The statute, however, does require that refugees register with an agency providing employment services and accept appropriate offers of employment as pre-conditions for receipt of cash assistance. Under the statute, the requirement for registration for employment services does not apply during the first 60 days after a refugee's arrival in the U.S.

Several other commenters generally agreed with making English language training and employment services priorities in the program but suggested that initial and ongoing health care and orientation services also be set as priorities in accomplishing the purposes of the program. The targeting of priorities by the Director of ORR in this regulation should not be interpreted to mean that services and assistance not targeted are not important. While we want to stress the immediate need of many newly arrived refugees for English language training and employment services, such emphasis is not meant to minimize other necessary, even vital, services needed by refugees. Although we are bound by specific statutory requirements placed on the program, our intent is to permit maximum flexibility in determining and planning to meet basic refugee needs.

We received six comments on the requirement that the plan describe how the State will ensure that language training and employment services are made available to refugees receiving cash assistance and to other refugees (§ 400.5(c)). Several commenters expressed concern about the scope of this requirement. One State requested the requirement be limited to assuring the provision of the services to refugees eligible for cash and medical assistance only, to avoid the possibility of being found out of compliance because the State lacked funds to assure that *all* refugees received these services. Other States commented that until there were Federal assurances that funding will be available and that the Departments of Labor and Education will supply assistance and resources to States, States cannot ensure service delivery.

We realize that the extent to which States provide these services to all refugees may be dependent upon the availability of Federal funds. States will not be penalized for failing to provide these services when funds are not available at the Federal level. Section 412(a)(1) of the Immigration and Nationality Act requires that the Director make sufficient resources for these services available "to the extent of available appropriations." States must give priority in providing these services to those refugees receiving cash assistance. The extent to which States can provide services to other refugees will depend upon the availability of funds.

3. Submittal and content of the plan.

a. *Due Date.* Four commenters expressed their concern that the October 1 due date for plans in § 400.4(a) did not allow enough time for States to develop comprehensive plans. They asked that the October 1 plan be considered a minimal plan and that States be allowed additional time to meet the requirements in § 400.5 (Content of the plan). Submittal of a plan that meets statutory and regulatory requirements by October 1, 1980, is a condition for receipt of Federal refugee resettlement funds. Plans submitted by October 1 must meet the minimal requirements set forth in this regulation.

We understand the difficulties States face in submitting a plan by the due date and have thus kept requirements for its content to a minimum. This plan is viewed as an initial document to be amended in the future. Federal funding to States will be provided unless a State fails to submit a plan or submits a plan that omits the statutory and regulatory requirements.

b. *State Coordinator.* We received 14 comments on the requirement that States designate a State Coordinator with the responsibility and authority to ensure coordination of public and private refugee resettlement resources (§ 400.5(d)). One commenter, in favor of the designation of a State Coordinator, urged that candidates be considered from both the private and public sector. States may select their State Coordinators from either the private or public sector. We do not expect the consideration of qualified individuals to be limited to a given sector.

One commenter suggested that we require the State Coordinator's office to develop and maintain a registry of available information on resources. We agree that such a registry is one of the State's responsibilities and will consider more detailed requirements when we develop more comprehensive program regulations or issue guidance on the expected role of the office.

One commenter requested that the title of the State Coordinator be left to the State. We have not accepted this suggestion because we want to stress the importance of this position.

Another commenter recommended that we require the Coordinator's office to be located in the Office of the Governor. The proposed regulation included the requirement that the State Coordinator "have the responsibility and authority to ensure coordination . . . ." However, the Act does not specify an organizational location for the State Coordinator, and we believe that this is a matter which can appropriately be determined by the State. In response to this recommendation, we have, however, amended the regulation to require that the State Coordinator be designated by the Governor or the appropriate legislative authority of the State.

We received a number of comments on the extent of the Coordinator's responsibility. Commenters were concerned about funding for the position because of State fiscal restraints. The cost of the position is reimbursable as a State administrative cost from funds allowed under the refugee resettlement program.

Other comments questioned the extent of the Coordinator's authority and the difficulty of ensuring coordination since voluntary resettlement organizations and other private groups are not required to report on their activities. The wording of this requirement is from the statute. We recognize the difficulty of this task and that the State Coordinator may not be able to achieve full coordination among agencies not funded through the State government. However, it is a vitally important function and one that will be invaluable in filling a void that has previously existed in the resettlement program. Private as well as public agencies stand to gain from the coordination effort and we would hope that agencies involved in the program would cooperate with the State Coordinator.

We received two comments expressing concern about the requirement in the statute that States, through their plans, insure "coordination of public and private resources in refugee resettlement." These respondents foresaw the creation of a new, expensive level of bureaucracy between HHS and the local agencies providing services. There was concern that States lack the authority over the private sector needed to meet statutory requirements.

The regulations published today, and the regulations under development, are in no way intended to create an additional level of bureaucracy that would discourage States and the private sector from participating in the program. Nor are we moving away from acknowledging the vital role of the private sector in refugee resettlement.

ORR is charged with insuring proper planning, coordination and accountability to Congress in the administration of the U.S. resettlement program. The Committee Report on the Refugee Act of 1980 (H. Rept. No. 96-608), states on page 20 that the Act is designed, among other things, to insure State and local government involvement in the resettlement process and require Federal and state-wide coordination in the expenditure of resettlement fund. This regulation, as well as future program regulations, are necessary if we are to fulfill our responsibilities under the statute and meet Congressional expectations.

c. *Identification and monitoring of necessary treatment of refugee medical problems.* We received 15 comments on the plan requirement that States provide for and describe their procedures to ensure identification of refugees who, at the time of resettlement in the State, are determined to have medical conditions or histories requiring treatment or observation, and the monitoring of any treatment or observation (§ 400.5(f)). Most respondents believe it is the Federal government's responsibility to identify health problems when refugees are screened for entry into the country and to supply States with necessary information.

Two commenters asked that the Center for Disease Control (CDC) of the U.S. Public Health Service transmit information to the health departments quickly. One commenter stated that it is the sponsor's responsibility to see that medical treatment is received and that voluntary resettlement agencies and the State Department must notify States of the arrival and of the sponsors of refugees for State monitoring purposes. Commenters thought the requirements too stringent because of lack of control of sponsors and refugee mobility. Two commenters were concerned that the requirement implies that the State is the primary health screening agent and mandates health screenings by the State to all refugees. Others were concerned about a State's ability to "ensure" that identification, treatment, observation and monitoring are done without necessary information and additional resources from the Federal government.

This plan requirement is statutorily imposed as a condition for the receipt of funds under title IV of the Immigration and Nationality Act. It is not within our discretion to change statutory language. However, in response to commenters' concern about a State's ability to "ensure" identification, treatment, observation, and monitoring, we have amended § 400.5(f) to require the plan to "provide for and describe the procedures established to identify refugees who. . . ." We believe some of the comments are based on a misunderstanding of the requirement. This regulation does not impose a screening requirement on States. It is the Federal government's responsibility to screen refugees before entry into the country for certain medical problems or medical conditions that require treatment or observation. The Federal government provides States with information obtained during these health screenings. We will make every effort to ensure that States receive necessary information on refugees' medical needs as quickly as possible. States should advise Mr. Ferdinand Tedesco of the Quarantine Division of CDC ((404) 329-3573) of the State official to be provided with this information.

Two commenters recommended that all refugees be eligible for medical assistance for the first year after entry. We are considering the question of eligibility for medical assistance for all

refugees for an initial period of time after arrival in developing regulations for medical assistance for refugees.

We also received three comments expressing concern that the regulation identify tuberculosis as a medical condition existing among refugees. These commenters stressed the need for an area-wide approach to the tuberculosis problem and suggested that the plan include a requirement for currently recommended procedures for the detection, management and prevention of tuberculosis. While we agree with the importance of diagnosis, treatment, and follow-up of tuberculosis among refugees, this exceeds the scope and intent of this regulation. The Public Health Service (PHS) has previously made a number of public health recommendations in this area, and we have brought these comments to PHS' attention for their consideration as to recommended public health procedures.

4. Plan Amendments.

One commenter pointed out that the proposed regulation did not require that a plan amendment must be determined to meet the plan requirements in section 400.5. Any plan amendment, as well as the plan, must meet the requirements in § 400.5. We have added the language to § 400.6 of the regulation.

5. Federal Financial Participation (FFP).

We received seven comments on the availability of Federal funds under the plan for cash and medical assistance, refugee support services and reasonable and necessary costs of administration (section 400.8). One commenter requested that we change the regulation to state that the Director will establish quarterly allocations according to the approved State plan. Quarterly grants will be made based on the plan and estimates submitted by the State, taking into account other pertinent information, such as a State's prior expenditure rates, funding authority needed for service projects approved by ORR, and the availability of funds.

Another commenter recommended including other economic assistance, social services and mental health services in the list of assistance and services eligible for funding. The three categories of assistance and services (cash assistance, medical assistance, and refugee support services) plus administrative costs are meant to cover all types of expenditures under the program. Guidance on the range of specific allowable services will be provided by program instruction.

6. State advisory councils.

We received 29 comments on the requirement that States establish an advisory council responsible for assisting in the development and review of any plan amendment (section 400.9). One commenter wanted the regulation to require State advisory council review of the initial plan. We required the council to review plan amendments after January 1, 1981, to allow adequate time to establish such a council. There may be situations where, by State law, only the State legislature can establish an advisory council and the legislature will not convene in time to meet the requirements for an advisory council in this regulation. Any State in which this is the case should indicate in its plan submittal that such a situation exists and a waiver of the requirements for an advisory council will be granted until such time as the legislature meets and establishes the council. If a State already has an advisory council in operation or can establish an advisory council before submittal of the plan, this regulation does not preclude that council's assistance in development and review of the initial plan. We would strongly encourage that participation.

Most commenters favored an advisory council but objected to limiting the maximum size of the counil to 15 members. Some States indicated they already have advisory councils with more than 15 members and others were concerned that limiting membership to that number would mean that all important views were not represented on the council. Some commenters wanted the size and composition of the council left to the State's discretion. One State suggested establishing a hierarchy of local and statewide councils.

Section 412(a)(6)(B) of the Act gives the Director the authority to establish standards, goals, and priorities which assure the effective resettlement of refugees and the efficient provision of services. The Director has exercised his authority under that section to set standards for the program that ensure the continued involvement of both the public and private sector working in cooperation to meet the particular needs of various refugee groups. The State advisory council must be comprised of individuals whose combined knowledge of, commitment to, and concerns for, refugees' quick economic and social adjustment make their involvement in the process of developing the plan a valuable test of the effectiveness we hope to achieve.

Although we believe that a requirement for a hierarchy of councils would be too extensive to impose on States, we recognize the need for, and encourage, maximum communication at all levels. We also recognize the need for adequate representation of views on the State council. Therefore, we have amended the regulation to allow membership of up to 25 individuals. This does not preclude a State from appointing more than 25 members to its advisory council. However, Federal reimbursement from program funds is limited to costs incurred on behalf of 25 members on the council.

In response to a suggestion that council membership be for a specific time period, we have specified one year for membership. This does not preclude reappointment of an individual for an additional year but ensures that new members may be appointed each year.

We received 15 comments on the composition of the advisory council. Several commenters wanted one-third of the members to be refugees; others wanted 51% of the members to be refugees. One commenter requested that membership be limited to voluntary resettlement agencies, while other commenters wanted State governments, health departments and organizations, the business community and other interested individuals to be added to the list of members. Commenters wanted assurances that council membership would be representative ethnically of the refugee population in the State and would include local representatives involved in all aspects of refugee resettlement. Several commenters were concerned that refugee members include women and that refugee members would be reimbursed for lost wages and/or paid per diem and travel costs.

We expect States to include a wide cross section of expertise and experience on advisory councils, and to ensure that selection is made without regard to sex or other bias. Some experience with advisory councils is needed, however, before we consider specific proportional composition requirements for councils. The list of members is not meant to be all inclusive; our intent is to ensure representation from a variety of sectors and viewpoints in the State. Because the council's experience should be specific to the needs of the State, we have required that members live in the State. We expect States to include representation by "other appropriate individuals and organizations." We do not, however, believe that a State needs representation by its own officials on the council. States have other means of receiving input from their own officials. Necessary and appropriate travel and per diem costs for the council are permissible costs for States under funds authorized for the refugee resettlement program.

Two commenters expressed concern that refugee membership not be limited

to refugees "eligible to benefit from services" because those refugees who have been successful in becoming assimilated into the mainstream would be excluded. The requirement that members be "refugees eligible to benefit from services" does not specifically limit membership to new arrivals because the statute does not place a time limit on eligibility for most services. (While the Act contains a 36-month limit, beginning April 1, 1981, on refugee eligibility, this limit applies only to eligibility for cash and medical assistance and child welfare services.) It would, however, preclude persons who have become U.S. citizens from being considered as "refugees."

7. Maintenance of records and annual reports.

We received 21 comments on the maintenance of records and reporting requirements in § 400.10. Most commenters were concerned that maintenance of records requirements were too stringent and would necessitate a significant increase in State efforts and Federal funding.

One commenter indicated that if requirements were not eased, we should supply Federal funds to develop systems to gather data. The commenter referred to the heavy burden of a screening, tracking and monitoring system for refugee medical problems. Since the program is funded up to 100%, the additional time and effort expended by States in establishing and maintaining records and preparing reports will be reimbursed under administrative costs, to the extent of available appropriations. However, as we noted previously, this regulation does not impose a screening requirement on States. We do not believe that the medical recordkeeping which is required exceeds that which would be maintained under any program assuring adequate treatment, observation, and monitoring.

One private nonprofit agency commented that it does not keep records documenting services and assistance provided to individual refugees, and was also concerned that there may be duplication of reporting requirements between the Department of State (DOS) and HHS. These requirements would apply to a voluntary resettlement or other private nonprofit agency only if the agency enters into a purchase-of-service agreement with the State for which HHS funds are used. Under such agreements, agencies must meet HHS requirements in 45 CFR Part 74 (Administration of Grants) and applicable regulations. Since the present regulation relates only to the use of HHS funds for refugee program activities, there would be no duplication with DOS reporting requirements.

These are basic maintenance of records requirements. We do not believe they are too stringent. However, to avoid duplication of effort and conflicting requirements with 45 CFR Part 74, we amended the proposed regulation by deleting 400.10(a)(4) which required maintenance of fiscal records in a format specified by the Director, and 400.10(a)(5) which required annual and other reports. The requirements of 45 CFR Part 74 apply to all HHS grants and include rules on the format and submittal of fiscal records and the length of time records must be maintained.

Eleven of the 21 comments received on section 400.10 concerned the annual report requirement. Three respondents were concerned that requiring an annual report only 60 days after the end of the fiscal year does not allow adequate time for preparation of the report. One commenter suggested a preliminary report be filed on January 1; another commenter suggested the report be filed by February 1. In keeping with 45 CFR Part 74 and in response to these concerns, we have amended the regulation to require filing of the report by December 31, allowing States 90 days after the close of the fiscal year to complete and submit it.

ORR is required to submit a substantive report to Congress each January 31 on program activities. Much of the information supplied by States in their annual report is needed for the report to Congress, including data on unaccompanied children as well as the extent to which refugees received assistance and services under the program.

One commenter saw the annual report as a funding document, with funding dependent upon report approval. Another commenter said the report should contain only fiscal information for the previous year and that the narrative statement of the program status belongs in a planning document. Four commenters requested that the report contain qualitative evaluation of the results of services provided as well as quantitative data.

We wish to clarify that the annual report is not a funding document. However, the statute requires submittal of the report as a condition for the State to receive funds under the Act.

In revising the reporting requirements to conform with the regulations on administration of grants in 45 CFR Part 74, we separated the annual report into the two reports required under Part 74: An annual performance report and an annual financial status report. The annual performance report must contain a narrative statement of the program status; State cash and medical assistance and support services caseloads; the number of refugees receiving English language training and employment-related services and a description of the services provided; a report on the status, location, and progress of unaccompanied refugee children admitted to the State; and additional statistical or programmatic information that the Director may require to enable proper Federal monitoring of the State's program.

We believe that the narrative statement of the progress achieved and of the State's plans for improvement of refugee resettlement is an essential part of the annual report. Information on a State's experience, progress, and plans will enable us to better understand and plan to meet the needs of resettled refugees in the country. The statement is a vehicle for the State to inform us about what is or is not working in the program. We would hope that the narrative statement would include a qualitative evaluation of the results of services provided. We are studying evaluation methods in conjunction with the development of further program regulations, and will address possible program evaluation methods in those regulations.

We received several comments on the requirement to report on the status and progress of each unaccompanied refugee child. One respondent referred to the reports currently required to be submitted by States to the ORR regional offices. These reports meet the requirements for reports on each individual child. The annual report requirement regarding unaccompanied children is intended to be of a summary nature, and we have revised the language accordingly. Another commenter stated that case planning is not a function of the Federal government and that States should submit only statistical data on unaccompanied refugee children because the Federal government should monitor the general flow of children to identify national trends while the States develop treatment plans for children based on their expertise. While we agree that individual case planning is a State responsibility, the Director of ORR is required by statute to maintain a list of unaccompanied refugee children, and to report to Congress annually on the location and status of unaccompanied refugee children.

8. Confidentiality of records.

We received eight comments on § 400.11, Confidentiality of records. Seven commenters were concerned that

the language would preclude the exchange of information between State, local, Federal and other public and private nonprofit agencies involved in the refugee resettlement program. Two commenters suggested adopting confidentiality of records language contained in the program regulations for Aid to Families with Dependent Children (AFDC) or Medicaid. We agree with respondents that information sharing is necessary for efficient coordination of the program, as long as a refugee's rights to privacy are protected. Therefore we amended the section by adding the language "Except for purposes directly connected with the administration of the program. . . ." In developing cash and medical assistance regulations, we will consider the confidentiality of records language in the AFDC, Medicaid and social services regulations.

One commenter questioned whether we should require a parent or guardian's consent to release of information concerning an individual if the individual is a minor. We agree and have added language to require this consent.

We amended the attached regulation to incorporate the changes discussed above as well as other minor clarifying or technical changes.

45 CFR Chapter IV is amended by adding a new Part 400 to read as follows:

PART 400—REFUGEE RESETTLEMENT PROGRAM

Subpart A—Introduction

Sec.

Subpart B—General Requirements

Authority: Sec. 412(a)(9). Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

Subpart A—Introduction

§ 400.1 Basis and purpose of the program.

(a) This part prescribes requirements concerning grants to States under title IV of the Immigration and Nationality Act.

(b) It is the purpose of this program to provide for the effective resettlement of refugees and to assist them to achieve economic self-sufficiency as quickly as possible.

(c) Under the authority in sec. 412(a)(6)(B), the Director has established the provision of English language training and employment services as a priority in accomplishing the purpose of this program.

§ 400.2 Definitions.

The following definitions are applicable for purposes of this part:

"Act" means the Immigration and Nationality Act;

"Cash assistance" means financial assistance for which funding is available under title IV of the Immigration and Nationality Act;

"Director" means the Director, Office of Refugee Resettlement;

"HHS" means the Department of Health and Human Services:

"Medical assistance" means medical services for which funding is available under title IV of the Immigration and Nationality Act;

"ORR" means the Office of Refugee Resettlement;

"Plan" means a written commitment by a State submitted under section 412(a)(6)(A) of the Act, to administer or supervise the administration of a refugee resettlement program in accordance with Federal requirements.

"Support services" means services provided by, or purchased by, a State, which are designed to meet resettlement needs of refugees, for which funding is available under title IV of the Immigration and Nationality Act;

"State" means the 50 States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa and the Trust Territories of the Pacific;

"State agency" means the agency designated by the Governor or the appropriate legislative authority of the State to develop and administer, or supervise the administration of, the plan under title IV of the Immigration and Nationality Act, and except where the context otherwise requires, includes any local agencies administering the plan under supervision of the State agency; and

"State Coordinator" means the individual designated by the Governor or the appropriate legislative authority of the State to be responsible for, and authorized to, ensure coordination of public and private resources of refugee resettlement.

§ 400.3 Other HHS regulations that apply.

The following HHS regulations apply to grants under this part:

42 CFR Part 441 Subparts E and F Services: Requirements and limits applicable to specific services—Abortions and Sterilizations
45 CFR Part 16 Department grant appeals process
45 CFR Part 74 Administration of grants
45 CFR Part 75 Informal grant appeals procedures
45 CFR Part 80 Nondiscrimination under programs receiving Federal assistance through the Department of Health, Education, and Welfare effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81 Practice and procedure for hearings under part 80 of this title
45 CFR Part 84 Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

Subpart B—General Requirements

§ 400.4 Purpose of the plan.

(a) In order for a State to receive refugee resettlement assistance from the allotments of funds under sec. 414 of the Act, it must submit, to ORR by October 1, 1980, a plan that the Director determines to meet the plan requirements in § 400.5.

(b) The plan is a statement submitted by the State describing the nature and scope of its program and giving assurances that the program will be administered in conformity with specific requirements stipulated in title IV of the Act, official issuances by the Director, and all applicable regulations. The plan contains information necessary for the Director to determine whether the plan meets the plan requirements under § 400.5 as a basis for Federal funding of the State program.

§ 400.5 Content of the plan.

The plan must:

(a) Provide for the designation of a State agency responsible for developing the plan, and administering, or supervising the administration of, the plan;

(b) Describe how the State will encourage effective refugee resettlement and promote economic self-sufficiency as quickly as possible, through effective use of cash assistance, medical assistance and support services;

(c) Describe how the State will ensure that language training and employment services are made available to refugees receiving cash assistance, and to other refugees, including State efforts to actively encourage refugee registration for employment services;

(d) Identify an individual designated by the Governor or the appropriate legislative authority of the State, with

the title of State Coordinator, who is employed by the State, and will have the responsibility and authority to ensure coordination of public and private resources in refugee resettlement;

(e) Provide for the care and supervision of, and legal responsibility for, unaccompanied refugee children in the State;

(f) Provide for and describe the procedures established to identify refugees who, at the time of resettlement in the State, are determined to have medical conditions requiring, or medical histories indicating a need for, treatment or observation, and the monitoring of any necessary treatment or observation;

(g) Specify the composition of the State advisory council established in accordance with the requirements of § 400.9 and describe how the State will ensure that the council is organized and operating by January 1, 1981;

(h) Provide that assistance and services funded under the plan will be provided to refugees without regard to race, religion, nationality, sex or political opinion; and

(i) Provide that the State will comply with the provisions of title IV of the Act, official issuances of the Director, and all applicable regulations, and will amend the plan as needed to comply with standards, goals, and priorities established by the Director.

§ 400.6 Plan amendments.

A State's administration or supervision of the program under this part must conform with the plan submitted to ORR, and determined by the Director to meet the plan requirements in § 400.5. Before the State agency implements any material changes in the content or adminstration of the plan, it must submit an amendment to the plan to ORR that the Director determines to meet the plan requirements in § 400.5.

§ 400.7 Submittal of plans for Governor's review.

A plan or plan amendment under title IV of the Act must be submitted to the State Governor for review and comment before the plan is submitted to ORR, unless the Governor delegates the authority to review and comment on the plan and plan amendment to the designated State agency or State Coordinator.

§ 400.8 Federal financial participation.

(a) Federal financial participation, under the terms and conditions approved by the Director, will be made available under the plan to States for cash and medical assistance, refugee support services, and reasonable and necessary administrative costs of such assistance and services, provided to eligible refugees beginning October 1, 1980. The Director will establish quarterly grants which will be communicated to States each quarter.

(b) A State must submit claims for Federal reimbursement for assistance and services provided to refugees under the plan on forms prescribed by the Director.

§ 400.9 State advisory council.

(a) A State must establish an advisory council responsible for assisting in the development and reviewing of any plan amendments after January 1, 1981.

(b) The State advisory council must be comprised of no less than five and no more than 25 members who live in the State and who are—(1) refugees eligible to benefit from services under the plan by virtue of being a refugee; and (2) representatives from local government, voluntary resettlement organizations, service providers, and other interested private organizations and individuals. Appointment to the council must be for a period of one year.

(c) The State must consult with the advisory council during the development of any plan amendment, and provide for the advisory council's review of the contents of a plan amendment prior to its submittal to ORR.

§ 400.10 Maintenance of records and reports.

(a) A State must provide for the maintenance of such operational records as are necessary for Federal monitoring of the State's refugee resettlement program. This recordkeeping must include:

(1) Documentation of services and assistance provided, including identification of individuals receiving those services;

(2) Records on the progress and status of unaccompanied minor refugee children, including the last known address of parents; and

(3) Documentation that necessary medical follow up services and monitoring have been provided.

(b) A State must submit statistical or programmatic information that the Director determines to be required to fulfill his or her responsibility under the Act.

(c) In order for a State to receive refugee resettlement assistance from the allotment of funds under sec. 414 of the Act, it must submit to the Director of ORR, by December 31 of each year, an annual performance report and an annual financial status report on the uses of funds received and administered by the State in the fiscal year ending the previous September 30.

(d) The performance report must include:

(1) A narrative statement of the program status, including progress achieved, problems encountered, and plans for improvement of refugee resettlement;

(2) State cash assistance, medical assistance and support services caseloads;

(3) The number of refugees receiving English language training services and a description of the services provided;

(4) The number of refugees receiving employment-related services and a description of the services provided;

(5) A report on the status, location, and progress of unaccompanied refugee children admitted to the State; and

(6) Additional statistical or programmatic information that the Director may require to enable proper Federal monitoring of the State's program.

(e) The financial status report must include expenditures for, and other financial data on, cash assistance, medical assistance, support services (by type of service), and administration.

§ 400.11 Confidentiality of records.

Except for purposes directly connected with the administration of the program, a State must ensure that no information about, or obtained from, an individual and in possession of any agency providing assistance or services to such individual under the plan, will be disclosed in a form identifiable with the individual without the individual's consent, or if the individual is a minor, the consent of his or her parent or guardian.

(Sec. 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)))

Approved: September 3, 1980.

Patricia Roberts Harris,

Secretary of the Department of Health and Human Services.

[FR Doc. 80-27724 Filed 9-8-80; 8:45 am]

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Proposed Rules

Federal Register
Vol. 45, No. 176
Tuesday, September 9, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

7 CFR Part 2852

U.S. Standards for Grades of Frozen Green Beans and Frozen Wax Beans

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the U.S. Standards for Grades of Frozen Green Beans and Frozen Wax Beans. These proposed voluntary grade standards were developed at the request of the frozen vegetable industry. These standards would provide industry with a common language and contribute to orderly and efficient marketing.

DATE: Comments must be received on or before September 30, 1981.

ADDRESS: Written comments should be sent to: Regulations Coordination Division, Attn: Annie Johnson, Food Safety and Quality Service. U.S. Department of Agriculture, Room 2637, South Building, Washington, D.C. 20250. See also comments under supplementary information.

FOR FURTHER INFORMATION CONTACT: Mr. Howard W. Schutz, Processed Products Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6247. The Draft Impact Analysis describing the options considered in developing this proposal and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION:

Significance

This proposal has been reviewed under the USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant".

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments must be sent in duplicate to the office of the Regulations Coordination Division and should bear a reference to the date and page number of this issue of the Federal Register. All comments submitted regarding this proposal will be made available for public inspection in the office of the Regulations Coordination Division during regular business hours (7 CFR 1.27(b)).

Background

A proposed revision of the U.S. Standards for Grades of Frozen Green Beans and Frozen Wax Beans was published in the Federal Register (43 FR 47755) on October 17, 1978. The purposes of the proposed revision are to adopt an on-line procedure for the attributes-type sampling, eliminate the dual grading nomenclature, consider bean "character" separately in determining the grade of frozen green beans and frozen wax beans, provide separate tolerances for precooked beans versus regular beans and eliminate color as a classified defect.

The current U.S. Standards for Grades of Frozen Green Beans and Frozen Wax Beans define "character" as a measurement of the tenderness, maturity and firmness of the bean. While beans determined to have "good" Character—as defined in the U.S. grade standards—are not considered deficient in quality, those determined to have "reasonably good," "fairly good" or "poor" character are considered quality deficient.

The tolerances provided in the present standards were established for a combination of character and other defects, including blemishes, mechanical damage, stems, vine material and bean pod fiber. Because of the importance of character in determining different levels of bean quality, there is a need to separate this factor in establishing grade. Accordingly, the proposed rule would establish separate tolerances for character and noncharacter defects. In addition, character defects for frozen wax beans would be separately defined from those of frozen green beans.

Present tolerances for noncharacter defects would also be modified. For example, since bean pod fiber is really an indication of advancing maturity and therefore would be considered in evaluating character, this factor would be eliminated from the list of noncharacter defects.

In response to the proposed rule, two comments were submitted. Both were filed by green and wax bean processors who generally favored the proposal. However, one of those commenting objected to the separate classification of normal color changes which occur in snap beans with advancing maturity. We agree that this factor of color is dependent upon the maturity of the beans and would be considered in evaluating character. Therefore, the factor of color would also be eliminated from the list of noncharacter defects. Only color changes which are not typical of snap beans will be considered. Accordingly, the prerequisite factor of brightness and the classified factor of blemished would be retained.

Tolerance adjustments would have the net effect of retaining about the same quality for each grade as the current standards.

Other changes in this proposed rule are in the interest of clarity and uniformity. These include replacing the dual grade nomenclature of "U.S. Grade A" or "U.S. Fancy," "U.S. Grade B" or "U.S. Extra Standard," and "U.S. Grade C" or "U.S. Standard" with "U.S. Grade A," "U.S. Grade B" and "U.S. Grade C," and referencing sampling plans contained in the general regulations.

Because of the comments received, and additional information available to the Department, the October 17, 1978, proposal is hereby withdrawn and a new proposal is published as set forth herein.

A manual to guide the user of the sampling plans is available to the public and may be obtained from Mr. Howard W. Schutz, Processed Products Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6247.

Options Considered

The Department considered three options in preparing this proposed rule.

Option I—Revise the U.S. Standards for Grades of Frozen Green Beans and Wax Beans

This action would revise the standards to adopt new grading procedures and establish separate

[1]Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act, or with applicable State laws and regulations.

tolerances for "character" defects. It would also provide separate tolerances for precooked beans versus regular beans; eliminate poor color as a classified defect but retain brightness as a prerequisite factor and blemishes as classified defects; and, eliminate the dual grading nomenclature.

Option II—Continue the Currently Effective U.S. Standards for Grades of Frozen Green Beans and Wax Beans

The frozen food industry would be denied a change in the standards. Also, the standards would not be simplified by this option.

Option III—Revise the Standards to Revert to the Variables Type (Score-point) Standards

This option would reverse the policy of developing attributes type standards, where applicable, that contain an objective, step-by-step grading procedure that is more easily understood.

Both Options II and III do not promote the orderly marketing of frozen snap beans and fail to utilize the procedure which is currently available to improve the U.S. standards.

Option I was selected for the reasons previously stated herein.

Accordingly, Subpart—United States Standards for Grades of Frozen Green Beans and Frozen Wax Beans (7 CFR Part 2852), §§ 2852.2321 through 2852.2332, would be revised; new §§ 2852.2333 and 2852.2334 would be added, and the Table of Contents would be amended to read as follows:

Subpart—U.S. Standards for Grades of Frozen Green Beans and Frozen Wax Beans

Subpart—U.S. Standards for Grades of Frozen Green Beans and Frozen Wax Beans

§ 2852.2321 Product description.

"Frozen green beans" and "frozen wax beans," hereinafter called "frozen beans," means the frozen product prepared from the clean, sound, succulent pods of the bean plant. The pods are stemmed, washed, blanched, sorted, and properly drained. The product is then frozen in accordance with good commercial practice and maintained at temperatures necessary for the preservation of the product.

§ 2852.2322 Styles.

(a) *"Whole"* means frozen beans consisting of whole pods of any length.

(b) *"Cut"* means frozen beans consisting of pods that are cut transversely into pieces less than 7 cm (2-¾ in) but not less than 1.9 cm (¾ in) in length.

(c) *"Short Cut"* means frozen beans consisting of pods that are cut transversely into pieces less that 1.9 cm (¾ in) in length.

(d) *"Mixed"* means a mixture of two or more of the following styles of frozen beans: Whole, cut, or short cut.

(e) *"Sliced Lengthwise"* means frozen beans consisting of pods that are sliced lengthwise and may also be known as *"French Style," "French Sliced," "Julienne,"* or *"Shoestring."*

§ 2852.2323 Style classification and tolerances.

(a) *General.* For the purpose of determining acceptance with the styles of *"Cut"* and *"Short Cut,"* pieces are considered as "minor" or "major" defects according to their lengths as specified in Table I. Each "X" represents one (1) defect.

(b) *Requirements.* Tolerances for style requirements are contained in Tables II and III.

Table I.—*Style Defect Classification*

Style	Defect	Classification	
		Minor	Major
Cut	Pieces shorter than 1.3 cm (½ in) in length.	X	
	Pieces longer than 7 cm (2¾ in) in length.		X
Short Cut	Pieces 1.9 cm (¾ in) or longer but not longer than 4.5 cm (1¾ in) in length.	X	
	Pieces longer than 4.5 cm (1¾ in) in length.		X

Table II.—*Tolerances for Cut Style*

	Total[2]	Major
AQL[1]	20.0	2.5

[1] AQL expressed as percent defective.
[2] Total=Minor+Major.

TABLE III.—*Tolerances for Short Cut Style*

	Total[2]	Major
AQL[1]	20.0	0.65

[1] AQL expressed as percent defective.
[2] Total=Minor+Major.

§ 2852.2324 Types.

The type of frozen beans is not incorporated in the grades of finished product, since it is not a factor of quality. The types of frozen beans are described as "round type" and "flat type."

(a) *"Round type"* means frozen beans having a width not greater than 1⅓ times the thickness of the bean.

(b) *"Flat type"* means frozen beans having a width greater than 1⅓ times the thickness of the beans.

§ 2852.2325 Kind of pack.

The kind of pack of frozen beans is not incorporated in the grades of finished product, since it is not a factor of quality. The kind of pack of frozen beans is described as "regular process" or "multi-branch process."

(a) *"Regular process"* means the frozen beans are processed in such a manner that the brightness is not affected by the process.

(b) *"Multi-blanch process"* means the frozen beans are intentionally processed in such a manner that the brightness is affected by the process.

§ 2852.2326 Definitions of terms.

(a) *Acceptable Quality Level (AQL)* means the maximum percent of defective units or the maximum number of defects per hundred units of product that, for the purpose of acceptance sampling, can be considered satisfactory as a process average.

(b) *Blemished* means any unit which is affected by discoloration, or any other means to the extent that the appearance or eating quality is adversely affected:

(1) Slightly;

(2) Materially; or

(3) Seriously.

(c) *Brightness* means the extent that the overall appearance of the sample unit as a mass is affected by dullness. (Applies to "regular pack" only).

(1) Grade A—not affected.

(2) Grade B—slightly affected.

(3) Grade C—materially affected.

(4) Substandard—seriously affected.

(d) *Character.* (1) *Round type—Green Beans.* (i) *Good character* means the pods are full fleshed; upon cooking, the pods are tender and the seeds are not mealy.

(ii) *Reasonably good character* means the pods are reasonably fleshy; upon cooking, the pods are tender and the seeds are not mealy.

(iii) *Fairly good character* means the pods have not entirely lost their fleshy structure; upon cooking, the pods may contain edible fiber (no inedible fiber allowed) and the seeds may be slightly mealy.

(iv) *Poor character* means the green beans fail the requirements for "fairly good character."

(2) *Round type—Wax Beans.* (i) *Good character* means the pods are full fleshed and may show slight breakdown of the flesh between seed cavities; upon cooking, the pods are tender and the seeds are not mealy.

(ii) *Reasonably good character* means the pods are reasonably fleshy and may show substantial breakdown of the flesh between the seed cavities; upon cooking, the pods are tender and the seeds are not mealy.

(iii) *Fairly good character* means the pods may show total breakdown of the flesh between the seed cavities with no definite seed pocket but still retain flesh on the inside pod wall; upon cooking, the pods may contain edible fiber (no inedible fiber allowed) and the seeds may be slightly mealy.

(iv) *Poor character* means the wax beans fail the requirements for "fairly good character."

(3) *Flat type.* (i) *Good character* means the pods have a definite seed pocket and the seeds may be slightly enlarged for the type; upon cooking, the pods are tender and the seeds are not mealy.

(ii) *Reasonably good character* means the pods may not have a definite seed pocket and the seeds may be no more than moderatly enlarged for the type; upon cooking, the pods are tender and the seeds may be slightly mealy.

(iii) *Fairly good character* means the pods are lacking a seed pocket; upon cooking, the pods may contain edible fiber (no inedible fiber allowed) and the seeds may be mealy and moderately hard.

(iv) *Poor character* means the flat beans fail the requirements of "fairly good character."

(4) *Fiber.* (i) *Edible fiber* means fiber developed in the wall of the bean pod that is noticeable upon chewing but may be consumed with the rest of the bean material without objection.

(ii) *Inedible fiber* means fiber developed in the wall of the bean pod that is objectionable upon chewing and tends to separate from the rest of the bean material.

(e) *Defect* means any nonconformance of unit(s) of product from a specified requirement of a single quality characteristic.

(f) *Detached stem* means the stem or portion of stem, that attaches the bean pod to the vine stem, has become separated from the pod.

(g) *Extraneous vegetable material (EVM).* (1) *Edible EVM* means tender, green, edible vegetable material similar in color and texture to that of bean pods, including but not limited to:

(i) Leaves or portions of leaves or grass;

(ii) Material from plants other than the bean plant.

(2) *Inedible EVM* means any plant material that is not tender, may not be green, may be tough, and includes but is not limited to:

(i) Discolored leaves or grass or portions thereof;

(ii) Bean stalk or vine material;

(iii) Material from plants other than the bean plant.

(h) *Flavor and odor.* (1) *Good flavor and odor* means the product, after cooking, has a good characteristic flavor and odor and is free from objectionable flavors and odors of any kind.

(2) *Fairly good flavor and odor* means the product, after cooking, may be lacking in good flavor and odor but is free from objectionable flavors and odors of any kind.

(i) *Mechanical damage* means any unit that is broken or split in two parts, or has very ragged edges, or is crushed, or is damaged by mechanical means to such an extent that the appearance is seriously affected.

(j) *Sample unit* means the amount of product specified to be used for inspection. It may be:

(1) The entire contents of a container;

(2) A portion of the contents of a container;

(3) A combination of the contents of two or more containers; or

(4) A portion of unpacked product.

(k) *Sloughing* means the separation of the outer layer of tissue from the bean pod giving a ragged or feathery appearance to the unit.

(l) *Small piece (Sliced lengthwise style only)* means a piece of pod less than 1.9 cm (¾ in) in the longest dimension and loose seeds and pieces of seeds.

(m) *Tough strings* means strings or pieces of strings, removed from the cooked bean pod, which will support a 227 g (½ lb) weight for not less than five (5) seconds.

(n) *Unit* means a bean pod or any individual portion thereof.

(o) *Unsnipped unit* means a unit without an attached stem but with a stem collar that is hard or tough and would be objectionable upon eating.

(p) *Unstemmed unit* means a unit with the attached stem or portion thereof that attaches the pod to the vine stem.

§ 2852.2327 Recommended sample unit sizes.

(a) In all styles, other than sliced lengthwise, a mechanically damaged unit that is broken into separate parts will be reassembled to approximate its original size and counted as one unit in the sample unit size.

(b) *Style requirements.* Requirements for cut and short cut styles are based on the recommended sample unit size of 200 units.

(c) *Quality requirements.* Requirements for factors of quality are based on the following recommended sample unit sizes for the respective style:

(1) *Classified defects (other than character).*

(i) Sliced lengthwise style—250 g (8.8 oz).

(ii) Whole style—100 units.

(iii) All other styles—200 units.

(2) *Character defects.*

(i) Sliced lengthwise style—250 g (8.8 oz).

(ii) Whole style—100 units.

(iii) All other styles—200 units.

§ 2852.2328 Grades.

(a) *"U.S. Grade A"* is the quality of frozen beans that:

(1) Meets the folowing prerequisites in which the beans:

(i) Have similar varietal characteristics (except "special" packs);

(ii) Have a good flavor and odor;

(iii) Have a good overall brightness as a mass that is not affected by dullness (Regular pack only);

(iv) In the style of "sliced lengthwise," have no more than 70 g of small pieces;

(v) Have an appearance or eating quality that is not materially affected by sloughing;

(2) Are within the limits for defects as classified in Table IV or V and specified in Table VI, VII, VIII, IX or X, as applicable, for the style.

(b) *"U.S. Grade B"* is the quality of frozen beans that:

(1) Meets the following prerequisites in which the beans:

(i) Have similar varietal characteristics (except "special" packs);

(ii) Have a good flavor and odor;

(iii) Have a reasonably good overall brightness as a mass which may be slightly dull (Regular pack only);

(iv) In the style of "sliced lengthwise," have no more than 70 g of small pieces;

(v) Have an appearance or eating quality that is not seriously affected by sloughing;

(2) Are within the limits for defects as classified in Table IV or V and specified in Table VI, VII, VIII, IX, or X, as applicable, for the style.

(c) *"U.S. Grade C"* is the quality of frozen beans that:

(1) Meets the following prerequisites in which the beans:

(i) Have similar varietal characteristics (except "special" packs):

(ii) Have a fairly good flavor and odor;
(iii) Have a fairly good overall brightness as a mass which may be dull but is not off-color (regular pack only);
(2) Are within the limits for defects as classified in Table IV or V and specified in Table VI, VII, VIII, IX, or X, as applicable, for the style.
(d) *"Substandard"* is the quality of frozen beans that fail to meet the requirements of *"U.S. Grade C."*

§ 2852.2329 Factors of quality.

The grade of frozen beans is based on requirments for the following quality factors:
(a) *Prerequisite quality factors:* (1) Similar varietal charcteristics (except "special" packs);
(2) Flavor and odor;
(3) Brightness (regular pack only);
(4) Freedom from small pieces in the "sliced lengthwise" style;
(5) Freedom from sloughing.
(b) *Classified quality factors:* (1) Blemished;
(2) Mechanical damage (all styles except sliced lengthwise);
(3) Workmanship;
(4) Tough strings;
(5) Extraneous vegetable material;
(6) Character.

§ 2852.2330 Classification of defects.

All defects, other than character defects, are classified as minor, major, severe, or critical. All character defects are classified as reasonably good, fairly good, or poor. Each "X" in Tables IV and V represents "one (1) defect."

Table IV.—*Classification of Defects (Other Than Character)*

[Cut, Short Cut, Whole, Mixed Styles]

Quality factor	Defects	Classification			
		Minor	Major	Severe	Critical
Blemished	Slightly	X			
	Materially		X		
	Seriously			X	
Mechanical damage	(All styles except sliced lengthwise)	X			
Workmanship	Unstemmed Unit			X	
	Detached Stem			X	
	Unsnipped Unit		X		
Tough strings	Each unit		X		
Extraneous vegetable material.	Edible (each piece)			X	
	Inedible (each piece)				X

[Sliced lengthwise style]

Quality factor	Defects	Classification			
		Minor	Major	Severe	Critical
Blemished (each 2.5 g)	Slightly	X			
	Materially		X		
	Seriously			X	
Workmanship	Unstemmed Unit			X	
	Detached Stem			X	
	Unsnipped Unit		X		
Tough strings	(each unit)		X		
Extraneous vegetable material.	Edible (each piece)		X		
	Inedible (each piece)				X

Table V.—*Classification of Character Defects*

[All styles]

Quality factor	Defect	Reasonably good	Fairly good	Poor
Character	"B" (each unit)	X		
	"C" (each unit)		X	
	"SSTD" (each unit)			X

NOTE.—For sliced lengthwise style only—each 2.5 g increment equals one (1) unit.

§ 2852.2331 Tolerances for defects.

Table VI.—*Cut, Short Cut, and Mixed Styles*

[All classified defects except character]

	Grade A				Grade B				Grade C			
	Total [2]	Major	Severe	Critical	Total [2]	Major	Severe	Critical	Total [2]	Major	Severe	Critical
AQL [1]	6.5	1.5	0.65	0.10	8.5	2.5	1.0	0.25	12.5	4.0	2.5	1.0

Table VII.—*Whole Style*

[All classified defects except character]

	Grade A				Grade B				Grade C			
	Total [2]	Major	Severe	Critical	Total [2]	Major	Severe	Critical	Total [2]	Major	Severe	Critical
AQL [1]	10.0	2.5	1.0	0.25	15.0	4.0	2.5	0.65	20.0	6.5	4.0	2.5

[1] AQL expressed as defects per hundred units.
[2] Total=Minor+Major+Severe+Critical.

Table VIII.—*Sliced Lengthwise Style*

[All classified defects except character]

	Grade A				Grade B				Grade C			
	Total [2]	Major	Severe	Critical	Total [2]	Major	Severe	Critical	Total [2]	Major	Severe	Critical
AQL [1]	6.5	2.5	1.5	0.25	10.0	4.0	2.5	0.65	15.0	6.5	4.0	2.5

[1] AQL expressed as defects per hundred units (100—2.5 g increments in 250 g).
[2] Total=Minor+Major+Severe+Critical.

Table IX.—*Cut, Short Cut, Whole, and Mixed Styles*

[Classified defects for character only]

	Grade A		Grade B		Grade C
	Total [2]	Fairly good	Poor	Total [3]	Poor	Total [4]
AQL [1]	6.5	0.65	0.15	6.5	0.65	6.5

[1] AQL expressed as percent defective.
[2] Total=Reasonably Good+Fairly Good+Poor.
[3] Total=Fairly Good+Poor.
[4] Total=Poor.

Table X.—*Sliced Lengthwise Style*

[Classified defects for character only]

	Grade A		Grade C
	Total [2]	Poor	Total [3]
AQL [1]	6.5	0.65	6.5

[1] AQL expressed as percent defective (100—2.5 g increments in 250 g).
[2] Total=Fairly Good=Poor.
[3] Total+Poor.

§ 2852.2332 Sample size.

The sample size used to determine the requirements of these standards shall be as specified in the sampling plans and procedures in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products" (7 CFR 2852.1—2852.83) for lot grading and on-line grading, as applicable.

§ 2852.2333 Style requirement criteria.

(a) *Lot grading.* A lot of frozen beans is considered as meeting the requirements for style if the Acceptable Quality Levels (AQL) in Tables II and III, as applicable for the style, are not exceeded.

(b) *On-line grading.* A portion of production is considered as meeting the requirements for style if the Acceptable Quality Levels (AQL) in Tables II and III, as applicable for the style, are not exceeded.

(c) *Single sample unit.* Each single sample unit submitted for style evaluation will be treated individually and is considered as meeting the requirements for style if the Acceptable Quality Levels (AQL) in Tables II and III, as applicable for the style, are not exceeded.

§ 2852.2334 Quality requirement criteria.

(a) *Lot grading.* A lot of frozen beans is considered as meeting the requirements for quality if:

(1) The prerequisite requirements specified in § 2852.2328 are met; and

(2) The Acceptable Quality Levels (AQL) in tables VI, VII, VIII, IX, and X, as applicable for the style, are not exceeded.

(b) *On-line grading.* A portion of production is considered as meeting requirements for quality if:

(1) The prerequisite requirements specified in § 2852.2328 are met; and

(2) The Acceptable Quality Levels (AQL) in Tables VI, VII, VIII, IX, and X, as applicable for the style, are not exceeded.

(c) *Single sample unit.* Each single sample unit submitted for quality evaluation will be treated individually and is considered as meeting the requirements for quality if:

(1) The prerequisite requirements specified in § 2852.2328 are met; and

(2) The Acceptable Quality Levels (AQL) in tables VI, VII, VIII, IX, and X, as applicable for the style, are not exceeded.

(Agricultural Marketing Act of 1946, Sections 203, 205, 60 Stat. 1087, 1090, as amended; (7 U.S.C. 1622, 1624))

Done at Washington, D.C., on September 4, 1980.

Donald L. Houston,

Administrator, Food Safety and Quality Service.

[FR Doc. 80-27717 Filed 9-8-80; 8:45 am]
BILLING CODE 3410-DM-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1601-5]

Approval and Promulgation of Revisions to the Michigan State Implementation Plan To Control Particulate Emissions From Iron and Steel Processes

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking supplements rulemaking proposed by the United States Environmental Protection Agency (USEPA) on August 13, 1979 (44 FR 47350) on a revision to the Michigan State Implementation Plan (SIP). The revision to the Michigan SIP was submitted by the State pursuant to Part D of the Clean Air Act as amended (Act). The purpose of today's notice is to discuss the results of USEPA's review of the Michigan particulate control strategy as it relates to emissions from iron and steel process sources and to invite public comment on the specific issues raised in this notice.

DATE: Comments on the parts of the Michigan SIP revision discussed in this notice and on USEPA's proposed actions of these revisions are due by October 9, 1980.

ADDRESSES: Copies of both the existing federally approved SIP and the proposed revisions to it are available for inspection at the following addresses:

United States Environmental Protection Agency, Region V, Air Enforcement Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

United States Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460.

Michigan Department of Natural Resources, Air Quality Division, State Secondary Government Complex, General Office Building, 7150 Harris Drive, Lansing, Michigan 48917.

WRITTEN COMMENTS SHOULD BE SENT TO: Cynthia Colantoni, United States Environmental Protection Agency, Air Enforcement Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Cynthia Colantoni, United States Environmental Protection Agency, Air Enforcement Branch, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone: 312/353-2110.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962), and October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Act, USEPA designated certain areas in each state as not meeting the National Ambient Air Quality Standards for total suspended particulates (TSP), sulfur dioxide (SO_2), carbon monoxide (CO), ozone (O_3), or nitrogen dioxide (NO_2).

Part D of the Act, which was added by the 1977 amendments, requires each state to revise its SIP to meet specific requirements for areas designated as nonattainment. These SIP revisions must demonstrate attainment of the primary National Ambient Air Quality Standards as expeditiously as practicable, but not later than December 31, 1982. Under certain conditions, the date may be extended to December 31, 1987, for ozone and/or carbon monoxide. The requirements for an approvable SIP are described in a Federal Register notice published April 4, 1979 (44 FR 20372). Supplements to the April 4, 1979 notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182). In addition, USEPA proposed rulemaking on November 27, 1979 (44 FR 67675) to clarify existing Federal regulations related to state or local discretionary authority to carry out provisions of a SIP.

On April 25, 1979, the State of Michigan submitted a portion of its revised SIP to USEPA to satisfy the requirements of Part D. USEPA published a notice of proposed rulemaking on many of the proposed revisions on August 13, 1979 (44 FR 47350). The notice of proposed rulemaking described the nature of most of the SIP revisions, discussed provisions which in USEPA's judgment did not comply with the requirements of the Act and requested comments from the State and public. USEPA published final rulemaking on these revisions on May 6, 1980 (45 FR 29790). The notice of proposed rulemaking did not discuss or solicit public comment on the State's strategy for controlling particulate emissions from iron and steel sources. Consequently, USEPA did not take final rulemaking action on these provisions on May 6, 1980. USEPA is today addressing these previously undiscussed provisions, proposing rulemaking action on them, and soliciting public comments. USEPA's proposed rulemaking on each of these provisions will take one of three forms: approval, conditional approval, or disapproval. A discussion of conditional approval and its practical effect appears in the July 2, 1979 Federal Register (44 FR 38583) and in the November 23, 1979 Federal Register (44 FR 67182).

As USEPA discussed in the August 13, 1979 Federal Register, some of the regulations in the State's April 25, 1979 submittal were preliminarily adopted by the Michigan Air Pollution Control Commission (MAPCC) and would be finally adopted after completion of necessary State administrative procedures. On January 9, 1980, USEPA received a letter from the State which demonstrated that all regulations were finally adopted and would be fully effective on January 18, 1980. USEPA's review of the finally adopted regulations indicated that the final regulations were the same as those submitted on April 25, 1979 except that Michigan modified its numbering system. USEPA has reviewed these finally enacted regulations and has determined that the requirement for legal adoption contained in section 110(a)(2) of the Act has been met. In the discussion below on specific rules, USEPA specifies for each rule the new number after the recodification.

The measures proposed for promulgation today will be in addition to, and not in lieu of, existing SIP regulations. The present emission control regulations for new and existing sources will remain applicable and enforceable to prevent a source from operating without controls, or under less stringent controls, while it is moving toward compliance with the new regulations; or if it chooses, challenging the new regulations. Failure by a source to meet applicable pre-existing regulations will result in appropriate enforcement action, including assessment of noncompliance penalties. Furthermore, if there is any instance of delay or lapse in the applicability or enforceability of the new regulations, because of a court order or for any other reason, the pre-existing regulations will be applicable and enforceable.

The only exception to this rule is in cases where there is a conflict between the requirements of the new regulations and the requirements of the existing regulations such that it would be impossible for a source to comply with the existing regulations while moving toward compliance with the new regulations. In these cases, the State may propose to exempt to a source from compliance with the pre-existing regulations. Any exemptions granted will be reviewed and acted on by USEPA either as part of these promulgated regulations or as a future SIP revision.

USEPA is providing a thirty day comment period because the public has had an opportunity to review the proposed revisions to the Michigan SIP since August 13, 1979, when USEPA announced receipt of the plan and proposed rulemaking on other provisions (44 FR 47350). To be considered, comments on this supplemental notice of proposed rulemaking must be postmarked not later than thirty days from the publication of this notice. If, however, interested parties require additional time to comment on USEPA's proposed rulemaking actions, they can petition USEPA at the address below for an extension of the comment period. Requests for extension of the comment period must be received by USEPA prior to the closing of the thirty day comment period announced in this Notice of Proposed Rulemaking.

Michigan Strategy for Controlling Particulate Emissions for Iron and Steel Sources

Part D of the Act requires State Implementation Plans to include strategies and regulations adequate to assure attainment of the primary National Ambient Air Quality Standards as expeditiously as practicable but not later than December 31, 1982, and in the interim, to provide reasonable further progress towards attainment through the application of reasonably available control technology (RACT) on all stationary sources. EPA has defined

RACT as: The lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.[1] Therefore, depending on site specific considerations, such as geographic constraints, RACT can differ for similar sources.

USEPA believes that the burden of demonstrating that a regulation represents RACT rests on the state. In reviewing a proposed SIP revision to determine its adequacy, USEPA can verify independently that the provisions in the state plan represent RACT. Although USEPA has not specified uniform RACT standards for the iron and steel industry, it has collected data which reflects the emission limitations achieved by various iron and steel sources applying control technology. This data is available for review in the rulemaking docket on this notice at the addresses cited above. Where a state proposes regulations which are not technically supported by USEPA's data, the state must submit adequate data supporting its proposal as representing RACT.

To remedy its particulate nonattainment problem, the State of Michigan proposes a control strategy which relies on existing regulations, amendments to existing regulations, and new regulations, and which commits the State to conduct additional studies of nontraditional sources of particulates. Although most of the regulations in the control strategy are generally applicable to particulate sources, some of the provisions are specifically for the control of particulate emissions from iron and steel process sources. USEPA completed final rulemaking on most of the Michigan particulate control strategy on May 6, 1980 (45 FR 29790). In that notice, USEPA conditionally approved the overall Michigan particulate control strategy but took no action on the strategy as to those TSP nonattainment areas containing iron and steel process sources. Those portions of the control strategy include Item C of Table 31 of Rule 336.1331 (formerly Rule 336.44) which regulates particulate emissions from steel manufacturing and new Rules 336.1349 through 336.1357 which provide standards of performance for slot type coke ovens.

The proposed rulemaking today addresses the previously omitted provisions of the Michigan submittal pertaining to particulate control for iron and steel process sources, and the control strategy in TSP nonattainment areas containing iron and steel sources and invites public comment on the specific revisions and USEPA's proposed action. Today's rulemaking proposes to approve certain regulations, conditionally approve certain regulations, disapprove others, and conditionally approve the Michigan particulate strategy for non-attainment areas containing iron and steel sources. The conditional approval of the control strategy follows from EPA's view that the regulations proposed for approval or conditional approval, along with Michigan's commitment either to demonstrate that certain new rules are RACT or to adopt acceptable rules on a specified schedule, satisfy the Part D requirements for Reasonably Available Control Technology. The requirements of RACT in conjunction with Michigan's ongoing commitment to further address non-traditional particulate sources and to adopt additional regulations to achieve attainment on a detailed schedule together satisfy the requirement for conditional approval of the particulate control strategy. However, if Michigan fails to meet on schedule its commitments regarding RACT required by today's notice or pertaining to non-traditional sources, it will not be meeting its obligations under the Act and the growth restrictions will again apply.

In certain instances USEPA was unable to propose approval of certain regulatory provisions submitted by Michigan only because source definitions or testing procedures were not clearly defined. In those instances this package proposes approval if during the comment period Michigan provides adequate clarification of the provision in question. Alternatively, this notice proposes conditional approval if Michigan makes a commitment to clarify the provision in question on a schedule to be negotiated during the comment period. That clarification may consist of a statement of traditional administrative practice, judicial interpretation, enforcement handbook, or other statement from an authoritative source (including the State hearing record). In each case where such clarification has been requested, the rulemaking docket contains examples of definitions or testing procedures acceptable to USEPA.

Rule 336.1301 General Opacity: USEPA today proposes to approve this general opacity rule because insofar as it relates to iron and steel sources this rule together with approvable mass emission rules is acceptable as reasonably available control technology.

Rule 336.1331 Emissions of Particulate Matter: Rule 336.1331 contains specific emission limitations for traditional sources of particulates and identifies the reference test method to be used to determine compliance with each emission limit. The emission limits in the regulation are applicable statewide. The rule, formerly codified as Rule 336.44, was submitted as a proposed revision to the existing plan which is Wayne County Air Pollution Control Regulation 6.1 and 6.2. In the May 6, 1980 Federal Register (45 FR 29790), USEPA approved revisions to Rule 336.1331 as part of the federally approved Michigan SIP but took no rulemaking action on the revisions to Item C of Table 31 of Rule 336.1331. USEPA's discussion of Item C of Table 31 which addresses steel manufacturing follows.

1. Open Hearth Furnaces

Michigan proposes revising the emission limitation in the existing federally approved SIP for open hearth furnaces from 0.15 pounds of particulate per 1,000 pounds of gas to 0.10 pounds of particulate per 1,000 pounds of gas. Data collected by USEPA demonstrates that a more stringent emission limit is achievable with the application of reasonably available control technology. This data is available for review at the addresses listed in the front of this notice. USEPA proposes to disapprove the proposed emission limitation for open hearth furnaces. Because there are no open hearth furnaces in Michigan the disapproval of this rule will not affect the overall approvability of Michigan's TSP Part D plan.

2. Basic Oxygen Furnaces

Michigan proposes revising the emission limitation in the existing federally approved SIP for basic oxygen furnaces from 0.15 pounds of particulate per 1,000 pounds of gas (0.078 gr/dscf) to 0.10 pounds of particulate per 1,000 pounds of gas (.053 grains per standard dry cubic foot (gr/dscf)). USEPA believes that a more stringent emission limitation is achievable with the application of reasonably available control technology. Data from Michigan BOF shops reflect that, during the oxygen blow, basic oxygen furnaces meet an emission limit in the range of 0.015 to 0.030 gr/dscf at the primary

[1] EPA articulated its definition of RACT in a memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, Regions I–X, on "Guidance for Determining Acceptability of SIP Regulations in Non-attainment Areas." Section 1.a (December 9, 1976), reprinted in (1976) 7 Environmental Reporter, Current Developments (BNA) 1210 col. 2; and in EPA's publication *Workshop on Requirements for Non-attainment Area Plans-Compilation of Presentations* 154 (OAQPS No. 1.2–103, revised edition April 1978).

control device. The proposed Michigan standard would also appear to apply to the outlet of secondary gas cleaners. For these devices EPA data reflects that a limit of 0.005 to 0.02 gr/dscf, is achievable, depending on flow rate and other variables. Alternatively data reflects that a mass emission standard for emissions from the entire BOF shop of 0.1 to 0.2 pounds per ton of ingot steel can be achieved. This data is available for review at the addresses listed in the front of this notice. Therefore, USEPA proposes to disapprove the proposed emission limitation for basic oxygen furnaces unless the State demonstrates during the comment period that its proposed emission limitation represents RACT. U.S. EPA will, however, conditionally approve the overall Part D plan if during the comment period Michigan commits to adopt and submit regulations reflecting RACT on a definite, identified schedule.

3. Electric Arc Furnaces

Michigan proposes revising the emission limitation in the existing federally approved SIP for electric arc furnaces from 0.15 pounds of particulate per 1,000 pounds of gas (0.078 gr/dscf) to 0.10 pounds of particulate per 1,000 pounds of gas (0.053 gr/dscf). USEPA believes that a more stringent emission limitation is achievable with the application of reasonably available control technology. For primary gas cleaning devices serving direct shell evacuation hoods, data collected by USEPA and contained in the rulemaking docket on this notice demonstrates that concentrations ranging from 0.005 to .030 gr/dscf are achievable. USEPA also believes that fugitive emissions from electric arc furnaces are controllable. Data collected by USEPA and contained in the rulemaking docket demonstrates that RACT for such controls achieve outlet concentrations between 0.005 and 0.020 gr/dscf depending on flow rates and other variables. Therefore, USEPA proposes to disapprove the proposed emission limitation unless the State demonstrates during the comment period that its proposed emission limitation represents RACT. U.S. EPA will, however, conditionally approve the overall Part D plan if during the comment period Michigan commits to adopt and submit regulations reflecting RACT on a definite, identified schedule.

4. Sintering Plants

In its April 25, 1979 submittal, the State did not propose revising the existing federally approved emission limitation for sintering plants of 0.20 pounds of particulate per 1,000 pounds of gas (0.10^6 gr/dscf). Sinter plants include both windbox and discharge ends to which this standard would apply. USEPA believes that a more stringent emission limit is achievable with the application of reasonably available control technology. Data collected by USEPA and contained in the rulemaking docket on this notice demonstrates that RACT for windbox emission and discharge emissions ranges from .010 to .035 gr/dscf and .005 to .020 gr/dscf, respectively, depending on the type of control employed. Therefore, USEPA proposes to disapprove this State rule unless the State demonstrates during the comment period that it represents RACT. U.S. EPA will, however, conditionally approve the overall Part D plan if during the comment period Michigan commits to adopt and submit regulations reflecting RACT on a definite, identified schedule.

5. Blast Furnaces

In its April 25, 1979 submittal, the State did not propose revising the existing federally approved emission limitation for blast furnaces of 0.15 pounds of particulate per 1,000 pounds of gas (0.078 gr/dscf). USEPA reads this rule to apply to stove emissions and casthouse emissions control devices. USEPA believes that a more stringent emission limit is achievable with the application of RACT. Gas cleaners on existing blast furnace stoves currently achieve 0.02 lbs./1000 pounds of gas. Data collected by USEPA and contained in the rulemaking docket on this notice demonstrates that RACT for gas cleaners installed to clean casthouse-generated and captured particulate emissions achieve 0.1 lbs./ton iron or, depending on capture air exhaust rate, a maximum of 0.010 gr/dscf, sampled and averaged over those periods when casting is occurring. Therefore, USEPA proposes to disapprove this State rule unless the State demonstrates during the comment period that it represents RACT. U.S. EPA will, however, conditionally approve the overall Part D plan if during the comment period Michigan commits to adopt and submit regulations reflecting RACT on a definite, identified schedule.

6. Heating and Reheating Furnaces

In its April 25, 1979 submittal, the State did not propose revising the existing federally approved emission limitation for heating and reheating furnaces of 0.30 pounds of particulate per 1,000 pounds of gas (0.16 gr/dscf). USEPA believes that a more stringent emission limit is achievable with the application of RACT. Data collected by USEPA and contained in the rulemaking docket on this notice demonstrates that RACT for these sources can reduce particulate emissions to a range from 0.005–0.010 gr/dscf or an equivalent opacity standard. Therefore, USEPA proposes to disapprove this State rule unless the State demonstrates during the comment period that it represents RACT. U.S. EPA will, however, conditionally approve the overall Part D plan if during the comment period Michigan commits to adopt and submit regulations reflecting RACT on a definite, identified schedule.

7. Coke Oven Preheater Equipment Effective After July 1, 1979

The State of Michigan proposes this new regulation as a SIP revision. USEPA proposes to approve the emission limitation of 0.45 pounds of particulate per ton of coal fed to the coal preheater if the State clarifies during the comment period that the emissions are determined based on the measurement of the whole train.

Rule 336.1349 Coke Oven Compliance Date: The State proposes new Rules 336.1350 through 336.1357 containing requirements for the control of emissions from existing slot type coke ovens statewide. The State also proposes new Rule 336.1349 which requires all facilities subject to these rules to achieve compliance as expeditiously as practicable but not later than December 31, 1982. While Rule 336.1349 specifies a final compliance date, interim increments of progress are not provided as required by 40 CFR Part 51.15 and Section 172(b)(3) of the Clean Air Act. Numerous coke oven emission sources in Michigan have already installed the equipment required and implemented the practices necessary to achieve the limitations required by the proposed Michigan rules in order to comply with the existing SIP. Therefore, USEPA proposes to approve this rule only if prior to final rulemaking the State (1) submits a schedule containing enforceable increments insuring reasonable further progress for each source subject to Rules 336.1350 through 336.1357 and (2) demonstrates a clear need for the additional time allowed.

Rule 336.1350 Emissions From Larry-Car Charging of Slot-Type Coke Ovens: The State proposes this new regulation which prevents larry-car, charging hole, or leveling door visible emissions except for periods aggregating 80 seconds during any four consecutive charging periods on a coke battery. The regulation does not specify an inspection method for evaluating compliance with the rule. Without a clearly defined inspection method, the

regulation is potentially unenforceable. Therefore, USEPA proposes to approve this regulation as part of the federally approved Michigan SIP if the State specifies an inspection method for determining compliance prior to final rulemaking. In the alternative, USEPA proposes to conditionally approve the regulation if the State makes a commitment to develop and submit an inspection method on a schedule to be negotiated by the State and the USEPA Regional Office prior to final rulemaking. Examples of acceptable test methods are contained in the rulemaking docket on this Notice.

Rule 336.1352 Pushing Emissions From Slot-Type Coke Ovens: Michigan proposes a new rule regulating pushing operations. The rule prevents the discharge from any opening between the oven and the coke-receiving car of any visible air contaminant of a density of more than 40% opacity, except that one pushing operation of any eight consecutive pushing operations can exceed this requirement. The regulation also provides that visible air contaminants of a density of more than 40% opacity may not be discharged from the coke in any coke-receiving car, as it travels from the oven to the quench tower, except that one trip to the quench tower in any eight consecutive trips to the quench tower can exceed this requirement.

In addition, Rule 352 only limits the opacity of pushing emissions from any opening *between* the oven and the coke-receiving car. The emissions from the car itself during the pushing operation should be regulated. The word "consecutive" in the one out of eight consecutive trips needs to be clarified to mean eight consecutively observed trips so as to distinguish it from eight chronologically occurring trips. The trips that are discussed in Rule 352 should be clarified to be either trips per battery or trips per system. With respect to the 40% opacity/fugitive emissions requirement, a clarification is needed that the 40% opacity is instantaneous and not an average. In addition, the method of reading 40% opacity (whether it is against the sky above the top of the collector main, or against a hood, or at the point of maximum density in any emission, etc.), needs to be clarified.

Data supporting these comments is available for review at the addresses listed in the front of this notice. Therefore, USEPA proposes to conditionally approve the proposed emission limitation for this source if the State makes a commitment to adopt and submit the clarifications identified on a schedule to be negotiated by the State and USEPA Regional Office prior to final rulemaking.

USEPA believes that in addition to the 40% rule, the Michigan rule should include a mass emission limitation on the gas cleaning equipment, installed to comply with this rule. Data collected by USEPA demonstrates that Michigan sources can achieve a mass emission rate not exceeding 0.1 pounds per ton of coke pushed. EPA will conditionally approve the overall Part D plan for iron and steel sources if Michigan commits to a schedule during the comment period for adopting an acceptable mass emission limit for these sources.

Rule 336.1353 Standpipe Assembly Emissions During Coke Cycle From Slot-Type Coke Ovens: Michigan proposes a new regulation which prevents visible emissions from a standpipe assembly during a coking cycle except that visible emissions may be emitted from a number of standpipe assembly points on a coking cycle not to exceed 4% of all standpipe assembly emission points on the coke battery. The regulation will not constitute RACT, unless the State clarifies that the 4% of all standpipe assembly emission points pertains to operating ovens.

The rule should also include a means to determine compliance to assure consistent enforcement of the standard. An acceptable methodology should include a description of the emissions to be observed, a description of the appropriate place of observation, and the scope of the observation. Examples of acceptable methodologies are included in the Docket. USEPA proposes to approve this rule provided that during the comment period the State clarifies the noted deficiencies or, in the alternative, conditionally approve it if during the comment period the State commits to remedy the deficiencies on an acceptable schedule.

Rule 336.1354 Standpipe Assembly Emissions During Decarbonization From Slot-Type Coke Ovens: Michigan proposes a new regulation which prevents visible air contaminants from any open standpipe lid of a density of more than 20% opacity except for the first two minutes of the decarbonization period. Moreover, it prohibits any standpipe lid to be open for decarbonization on any oven which is more than three ovens ahead of the oven being pushed. USEPA proposes to approve this regulation.

Rule 336.1355 Coke Oven Gas Collector Main Emissions From Slot-Type Coke Ovens: Michigan proposes this new regulation which prevents visible emissions from coke oven gas collector mains. USEPA proposes to approve this rule.

Rule 336.1356 Coke Oven Door Emissions From Slot-Type Coke Ovens, Doors Which Are Five Meters or Shorter, and Rule 336.1357 Coke Oven Door Emissions from Slot-Type Coke Ovens, Doors Which Are Taller Than Five Meters: Michigan proposes these new regulations to control emissions from coke oven doors by limiting the number of leaking doors per battery. USEPA proposes to approve these regulations if Michigan clarifies the test methodology to determine compliance. The USEPA proposes to approve these rules provided that during the comment period the State clarifies the noted deficiency, or in the alternative conditionally approve them if the State commits during the comment period to clarify the deficiency on an acceptable schedule.

Coke Battery Combustion Stacks

In its April 25, 1979 submittal, the State did not propose revising the existing federally approved emission limitation (336.1331) for coke battery combustion stacks of approximately 45 pounds per hour (in excess of 0.15 gr/dscf).

USEPA believes that a more stringent emission limit is achievable with the application of RACT. Data collected by USEPA and contained in the rulemaking docket on this notice demonstrates that RACT for these sources is a particulate concentration of 0.030–0.050 gr/dscf. Therefore, USEPA proposes to disapprove this State rule unless the State demonstrates during the comment period that it represents RACT. US EPA will, however, conditionally approve the overall Part D plan if during the comment period Michigan commits to adopt and submit regulations reflecting RACT on a definite, identified schedule.

By Product Coke Plant Quenching Emissions

In its April 25, 1979 submission Michigan did not propose revising its existing Federally approved process weight regulation for coke plant quench towers. EPA has found this type of regulation to be inadequate because severe problems involved in testing quench towers render it unenforceable. However, USEPA has determined that there is a relationship between the quality of water used to quench incandescent coke and the quantity of emissions generated by the quenching process. Empirical data available to USEPA and contained in the rulemaking docket on this notice demonstrates that the quantity of total dissolved solids (TDS) in quench water is approximately two times the quantity of TDS in the make-up water. To improve this rule,

Michigan could adopt a specific TDS quench water or make-up water requirement and a method for determining such TDS levels, on a daily basis. USEPA's technical information indicates that quench water with 1000–1325 milligrams per liter (mg/l) TDS in the quench water or 500–600 mg/1 in the make-up water represents a reasonably available control technology standard. USEPA will approve the proposed emission limitation if the State develops and submits an acceptable test method for quench towers during the comment period. In the alternative USEPA will conditionally approve the overall Part D plan if during the comment period Michigan commits to adopt and submit regulations consistent with the above discussion.

Scarfing

In its April 25, 1979 submittal, the State did not propose a specific emission limitation to control scarfing emissions. The Michigan plan controls scarfing emissions by Table 32 of Rule 336.1331 which limits particulate emissions from most scarfers to 50–70 lbs./hr. Data collected by USEPA and contained in the rulemaking docket on this notice demonstrates that the following standards can be achieved utilizing RACT:

1. A concentration, during scarfing, of 0.010–0.030 gr/dscf;
2. A mass rate of 5–10 pounds/hour during times of continuous scarfing; or,
3. A concentration per continuous hour, of 0.005–0.010 gr/dscf.

An acceptable Part D plan must ultimately include rules requiring RACT for scarfing emissions. EPA will conditionally approve the overall Part D plan for iron and steel sources if Michigan commits during the comment period to a schedule on which such rules will be adopted.

Part 10 Testing

The Michigan rules do not specify when the testing periods for iron and steel industry facilities begin and terminate. Test methods should be clarified so that the testing of the fugitive emissions from blast furnaces should occur during the cast. The starting and ending period should be specified for basic oxygen furnaces (for both primary and secondary emissions generating operations), electric arc furnaces and for each of the three emission processes at sinter plants. USEPA proposes to approve these rules if during the comment period the State makes these clarifications or in the alternative conditionally approve them if the State commits during the comment period to a schedule by which these clarifications will be made.

Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant", and therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels these other regulations "specialized". I have reviewed these proposed regulations pursuant to the guidance and USEPA's response to Executive Order 12044 "Improving Environmental Regulations", signed March 29, 1979, by the Administrator and I have determined that they are specialized regulations not subject to the procedural requirements of Executive Order 12044.

(Sections 110(a) and 172 of the Clean Air Act, as amended (42 U.S.C. Section 7410(a), 7502).)

John McGuire,
Regional Administrator.

[FR Doc. 80-27592 Filed 9-8-80; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 52

[FRL 1599-4]

Approval and Promulgation of Implementation Plans; Nonattainment Area Plans for the State of Nevada

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: On April 10 and 27, 1979 (44 FR 21307 and 24880) the Environmental Protection Agency (EPA) published Notices of Proposed Rulemaking for the following nonattainment area plans (NAPs): Mason Valley/Fernley Area, Lander County, Carson Desert, Winnemucca Segment, Truckee Meadows, and Las Vegas Valley. Revisions to these NAPs have been submitted to EPA by the Governor. The revisions consist of amendments to Nevada's Air Quality Regulations, Clark County Health District's Air Pollution Control Regulations, Washoe County District Board of Health's Air Pollution Control Regulations, and other documentation which supports the control strategies in the NAPs. The intended effect of these revisions is to correct certain deficiencies in the previously submitted NAPs, which had been identified in the April 10 and 27, 1979 notices.

The EPA invites public comments on these revisions, the identified issues, suggested corrections, and associated proposed deadlines and whether the overall plans or certain portions of the plans should be approved, conditionally approved, or disapproved, especially with respect to the requirements of Part D of the Clean Air Act.

DATES: Comments must be received on or before October 9, 1980.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air and Hazardous Materials Division, Air Technical Branch, Regulatory Section (A-4), Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105.

Copies of the proposed revisions, the NAPs, and EPA's associated Evaluation Reports are contained in document files NAP-NV-1, 3, 4, 5, 6, and 7 and are available for public inspection during normal business hours at the EPA Region IX Office at the above address and at the following locations:

Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 201 South Fall Street, Carson City, NV 89101.
Public Information Reference Unit, Room 2404 (EPA Library), 401 "M" Street SW., Washington, D.C. 20460.

In addition, copies of the applicable NAPs are available at the following locations:

Lyon County Commission, Drawer G, Yerington, NV 89447.
City of Yerington, Box 479, Yerington, NV 89447.
Lander County Commission, Courthouse, Austin, NV 89502.
City of Fallon, 55 West Williams, Fallon, NV 89406.
Humboldt County Board of Commissioners, P.O. Box 352, Winnemucca, NV 89445.
Washoe Council of Governments, 241 Ridge Street, Reno, NV 89502.
Clark County Department of Comprehensive Planning, Environmental Protection Division, 200 East Carson Avenue, Las Vegas, NV 89101.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, Regulatory Section, Air Technical Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region IX, (415) 566-2938.

SUPPLEMENTARY INFORMATION:

Proposed Action

The revisions have been evaluated for conformance with the requirements of Part D of the Clean Air Act, as amended in 1977, "Plan Requirements for Nonattainment Areas."

EPA's review indicates that the revisions for the Mason Valley/Fernley Area, Lander County, Carson Desert,

Winnemucca Segment, Truckee Meadows, and Las Vegas Valley NAPs are consistent with the Part D requirements and that the deficiencies identified in the April 10 and 27, 1979 notices have been corrected, with certain minor exceptions as noted below. EPA is proposing to approve and incorporate into the State Implementation Plan (SIP) those portions of the NAPs that have been corrected.

The resources portion of all the NAPs contains a minor deficiency with respect to Part D. In addition, the following portions of the Truckee Meadows (TM) and Las Vegas Valley (LVV) NAPs contain minor deficiencies with respect to Part D: legally adopted measures for carbon monoxide (TM and LVV), extension requirements for carbon monoxide (LVV), attainment provision, extension requirements, and legally adopted measures, for ozone (LVV), and legally adopted measures for particulate matter (LVV). These portions of the NAPs are proposed to be approved and incorporated into the SIP with the condition that the deficiencies be corrected by a specified deadline.

Therefore, EPA is revising the April 10 and 27, 1979 proposed rulemaking actions regarding the NAPs and, in this notice, proposes to conditionally approve the Mason Valley/Fernley Area, Lander County, Carson Desert, Winnemucca Segment, Truckee Meadows, and Las Vegas Valley NAPs with respect to Part D of the Clean Air Act.

Upon final rulemaking action, conditional approval would be sufficient to lift the current prohibition on construction of certain new or modified sources in these nonattainment areas. This prohibition is required by the Clean Air Act and is discussed in detail in the July 2, 1979 Federal Register (44 FR 38471).

Background

New provisions of the Clean Air Act, amended in August 1977, Public Law No. 95-95, require states to revise their SIPs for all areas that do not attain the National Ambient Air Quality Standards (NAAQS).

On April 4, 1979 (44 FR 20372), EPA published a General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas. In addition, EPA published Supplements to the General Preamble on July 2, August 28, September 17, and November 23, 1979 (44 FR 38583, 50371, 53761 and 67182). The General Preamble supplements this notice by identifying the major considerations that will guide EPA's evaluation of the revisions submitted.

The following table shows the areas, plans, and nonattainment designation for those portions of the State of Nevada covered in the notice:

Area	Plan	Pollutant		
		Ozone	Carbon monoxide	Total suspended particulate
Las Vegas Valley	Las Vegas Valley	X	X	X
Truckee Meadows	Truckee Meadows	X	X	X
Mason Valley	Mason Valley/Fernley area			X
Fernley area	Mason Valley/Fernely area			X
Lower Reese River Valley	Lander County			X
Clovers area	Lander County			X
Carson Desert	Carson Desert			X
Winnemucca segment	Winnemucca segment			X

On December 29, 1978, the Governor of Nevada submitted NAPs for the Mason Valley/Fernley Area, Lander County, Carson Desert, Winnemucca Segment, Truckee Meadows, and Las Vegas Valley to EPA as revisions to the SIP. In addition, the Governor submitted statutes and regulations which together provide an inspection and maintenance (I/M) program for portions of Nevada. EPA evaluated the submitted plans and the I/M program with respect to the Clean Air Act requirements and published notices of proposed rulemaking in the Federal Register on April 10, April 27, and May 7, 1979. Those notices provide descriptions of the December 29, 1978 SIP revisions, summarize the Clean Air Act requirements, compare the revisions to those requirements, identify deficiencies, and suggest corrections. Those notices should be consulted for necessary background information concerning today's proposed rulemaking action.

Description of Proposed Revisions

This notice includes NAP related SIP revisions submitted by the Governor prior to April 1, 1980. The revisions submitted on July 24, and September 18, 1979 and March 17, 1980 include: (1) amendments to Nevada's Air Quality Regulations; (2) amendments to Clark County Health District's Air Pollution Control Regulations; (3) amendments to the Washoe County District Board of Health's Air Pollution Control Regulations; (4) paving schedules for the Mason Valley/Fernley Area, Carson Desert, and Winnemucca Segment; (5) a resolution concerning Lander County; (6) two memoranda of understanding between Clark County, the Health District, and the Transportation Policy Committee; and (7) Senate Bill 543 and Assembly Bill 281 which amend Nevada Revised Statutes 445.632, 445.634, 445.635, and 445.644. In order to expedite EPA's review of the NAPs, this notice addresses only the portions of the State and County regulations mentioned above which appear to relate to applicable Part D requirements, and thus support the NAPs, such as violatile organic compound and new source review rules. The regulations revisions and the appropriate submittal dates are listed below.

Nevada Air Quality Regulations

July 24, 1979

Article 1—Definitions (Nos. 1 and 2)
Article 3—Registration Certificates and Operating Permits
Article 13.1.3—Point Sources and Registration Certificates

March 17, 1980

Article 13.1.3—Point Sources and Registration Certificates

Nevada Revised Statutes

July 24, 1979

445.632
445.634
445.635
445.644

Clark County Health District Air Pollution Control Regulations

July 24, 1979

Section 1—Definitions
Section 15—Source Registration
Section 50—Storage of Petroleum Products
Section 51—Petroleum Product Loading into Tank Trucks and Trailers
Section 52—Handling of Gasoline at Service Stations, Airports and Storage Tanks

September 18, 1979

Section 1—Definitions
Section 15.13.13—Public Participation
Section 60—Evaporation and Leakage

Washoe County District Board of Health Air Pollution Control Regulations

July 24, 1979

Sections 010.011 to 010.1751, Definitions
Sections 030.000 to 030.3108, Source Registration and Operation
Section 040.070, Storage of Petroleum Products
Section 040.075, Gasoline Loading into Tank Trucks and Trailers
Section 040.080, Gasoline Unloading from Tank Trucks and Trailers into Storage Tanks
Section 040.085, Organic Solvents
Section 040.090, Cut-Back Asphalt

Criteria for Approval

The following list summarizes the basic requirements for Nonattainment Area Plans. The citations which follow referring to portions of the Clean Air Act, provide the bases for these requirements.

1. An accurate inventory of existing emissions (172(b)(4)).
2. A modeling analysis indicating the level of control needed to attain by 1982 (172(a)).
3. Emission reduction estimates for each adopted control measure (172(a)).
4. A provision for expeditious attainment of the standards (172(a)).
5. Provisions for reasonable further progress as defined in section 171 of the Act (172(b)(3)).
6. Adoption in legally enforceable form of all measures necessary to provide for attainment or, in certain circumstances where adoption by 1979 is not possible, a schedule for development, adoption, submittal and implementation of these measures (172(b)(2), (8) and (10)).
7. An identification of an emissions growth increment (172(b)(5)).
8. Provisions for annual reporting with respect to items (5) and (6) above (172(b)(3) and (4)).
9. A permit program for major new or modified sources (172(b)(6) and 173).
10. An identification of and commitment to the resources necessary to carry out the plan (172(b)(7)).
11. Evidence of public, local government, and state involvement and consultation (172(b)(9)).
12. Evidence that the proposed SIP revisions were adopted by the State after reasonable notice and public hearing (172(b)(1)).
13. For carbon monoxide and ozone SIP revisions that provide for attainment of the primary standard later than 1982:

a. A permit program for major new or modified sources requiring an evaluation of alternative sites and consideration of environmental and social costs (172(b)(11)(A)).

b. A provision for implementation of all reasonably available control measures for mobile and transportation sources (172(a)(2)).

c. A commitment to establish, expand, or improve public transportation to meet basic transportation needs (110)(a)(3)(D) and (110)(c)(5)(B).

d. In addition to the above, for major urbanized areas, a specific schedule and legal authority for implementation of a vehicle emission control inspection and maintenance program (172(b)(11)(B)).

14. For ozone nonattainment areas requiring an extension beyond 1982, the revision must also provide for adoption of legally enforceable regulations to reflect the application of reasonably available control technology (RACT) to those volatile organic compound (VOC) stationary sources for which EPA has published a Control Techniques Guideline by January 1978, and a commitment to adopt RACT regulations for additional sources to be covered by future guidelines (172(a)(2)). For rural areas, and urban areas that demonstrate attainment by 1982, only large sources (more than 100 tons/year emissions) must be so regulated.

Discussion

The paragraph numbers below correspond to the Part D plan requirements described in the preceding section, Criteria for Approval. In this section, the word "plan(s)" means the overall NAP or portions of the NAP, specific to certain area(s) and pollutant(s).

EPA policy for approval of ozone nonattainment area plans submitted as 1979 SIP revisions differentiates between rural and urban nonattainment areas. EPA's policy, including the definition of rural areas, is discussed in the General Preamble. Based on the definition of rural areas and the policy, Truckee Meadows is considered a rural area. As referenced in the General Preamble, EPA's minimum requirements for an approvable 1979 rural ozone plan do not provide that all of the Criteria for Approval listed above be fully met. This distinction does not affect the analysis of the other plans contained in this Notice.

Each criterion is discussed in depth below. As noted in the **SUMMARY** section, EPA reviewed the plans for conformance with these requirements and, in this section, identifies the portions of the plans that are approvable or conditionally approvable. Where a plan deficiency is identified, recommendations for revision of the plan are specified. Based on this analysis EPA proposes to approve conditionally each of the plans overall with respect to Part D.

1. Emission Inventory

EPA's review of the emission inventories for particulate matter, carbon monoxide (CO), hydrocarbons (HC), and nitrogen oxides finds them to be reasonably accurate, comprehensive, and current. Accordingly, EPA proposes to approve this portion of the plans.

2. Modeling

Carbon Monoxide and Particulate Matter. EPA's review of the analyses of the necessary level of control to attain the standards indicates that, for purposes of the 1979 SIP revision, the modeling analysis for all areas adequately determined the emission reductions required to attain the carbon monoxide (CO) and total suspended particulate (TSP) standards. The carbon monoxide model used for the Las Vegas Valley has been validated in response to EPA's comments in the April 27, 1979 Notice of Proposed Rulemaking. Therefore, EPA proposes to approve the TSP and CO modeling portions of the plans.

Ozone. As referenced in the General Preamble, EPA policy does not require a specific demonstration of attainment for rural ozone nonattainment areas. Therefore, no ozone modeling is required for the Truckee Meadows ozone NAP. An accurate identification of the necessary level of control to attain the ozone standards in urban areas such as Las Vegas is required. The modeling contained in the Las Vegas Valley ozone NAP is sufficient for the 1979 SIP revision and EPA proposes to approve the ozone modeling portion of the plans.

3. Emission Reduction Estimates

EPA proposes to approve the emission reduction estimates in each of the plans.

4. Attainment Provision

Particulate Matter. EPA proposes to approve in each plan the attainment provision for the total suspended particulate (TSP) primary standards. EPA also proposes to grant the State's request for an extension to July 1, 1980, for submittal of plans showing attainment of the secondary standards for TSP, as discussed in the April 10, and 27, 1979 notices.

Carbon Monoxide. For Las Vegas Valley, the State requested an extension of the attainment date beyond 1982, and committed to submitting a revised NAP by July 1982 that provides for expeditious attainment. Based on the information submitted, EPA proposes to grant this extension pursuant to the provisions of Section 172(a)(2) and EPA proposes to approve the submitted

demonstration of attainment as satisfactory for the 1979 SIP revision. For Truckee Meadows, the plan demonstrates attainment by 1982 and EPA proposes to approve this portion of the Truckee Meadows CO plan.

Ozone. Both the Las Vegas Valley NAP and the Truckee Meadows NAP request an extension beyond 1982 to attain the photochemical oxidant standard of 0.08 ppm, which has since been revised by promulgation of the present standard for ozone of 0.12 ppm (see 44 FR 8202, February 8, 1979). The control strategy demonstration submitted by the State is inadequate since attainment of previous standard of 0.08 ppm is not shown by 1987. Unless the Las Vegas Valley is reclassified to attainment or unclassified (as requested by the State), the NAP for this area must be revised to provide expeditious attainment of, as a minimum, the 0.12 ppm national standard for ozone. The State may choose to continue to attempt to show attainment with the previous 0.08 ppm standard. Also, the granting of an attainment date extension to 1982 must be justified using the 0.12 ppm ozone standards as the benchmark, regardless of the final ozone level desired. Therefore, this portion of the Las Vegas Valley ozone NAP is proposed to be approved with the following conditions: (1) that the State submit by January 1, 1981 a demonstration showing attainment of either the 0.12 ppm standard or the 0.08 ppm standard; (2) if an attainment date extension is still desired, either demonstration must show that attainment of the 0.12 ppm standard by December 31, 1982 is impossible despite implementation of all reasonably available measures. These conditions do not apply to the Truckee Meadows NAP since, as explained above, ozone NAPs for rural areas need not include a specific demonstration of attainment. Therefore, EPA proposes to approve this portion of the Truckee Meadows ozone plan.

5. Reasonable Further Progress

As referenced in the General Preamble, rural ozone nonattainment area plans need not contain a specific demonstration of reasonable further progress. Thus such a demonstration need not be made for the Truckee Meadows ozone plan. The showing of estimated emission reductions in all of the other plans appears to be consistent with the requirements of Section 172(b)(3), and the definition of reasonable further progress in Section 171(1). This showing must be supported by the implementation of a process for monitoring and verification of transportation related emission reductions. EPA proposes to approve this portion of all the plans.

6. Legally-Adopted Measures

Particulate Matter. EPA's Notices of Proposed Rulemaking of April 10 and 27, 1979, indicated that all participate matter NAPs except for the Truckee Meadows NAP, lack sufficient evidence of commitments to scedules for study, adoption, or implementation of control measures. The State's July 24, 1979 SIP revision included the necessary commitments to fugitive dust control measures, and schedules for Mason Valley/Fernley Area, Carson Desert, Winnemucca Segment, and Lander County.

A letter dated June 22, 1979, from the Clark County Manager to EPA, Region IX, indicated that the adopted measures and schedules identified in the Las Vegas Valley NAP had been supplemented by the following measures:

(a) A Clark County ordinance requiring paving of certain roads to subdivisions;

(b) A demonstration project involving road stabilization by the Regional Street and Highway Commission;

(c) A demonstration project involving short-term stabilization of a cleared area in downtown Las Vegas; and

(d) A demonstration project for reducing fugitive dust emissions from construction activities.

In addition, the July 24, 1979 SIP revision included more stringent fugitive dust regulations (amendments to Sections 9 and 41 of the Clark County Air Pollution Control Regulations). These added measures for evaluation and control of nontraditional emissions, together with commitments and enforceable procedures in the original NAP, constitute an acceptable program for the attainment of total suspended particulate primary standards. This portion of the Las Vegas Valley particulate matter NAP is proposed to be approved with the condition that the State officially submit by January 1, 1981 the measures referenced in the June 22, 1979 letter from the Clark County Manager.

Carbon Monoxide. Neither the Las Vegas Valley CO plan nor the Truckee Meadows CO plan satisfy the requirements of Section 172(b)(10), since the plans do not include sufficient written evidence that all the agencies identified as responsible for transportation related measures have formally committed to implement and (where appropriate) enforce the necessary transportation control measures, nor have they adequately identified the specific measures to be implemented and established implementation schedules with milestone dates for planning, programming, implementing, operating, enforcing, and monitoring each transportation control measure consistent with a demonstration of reasonable further progress. This portion of the Las Vegas Valley and Truckee Meadows CO plans is proposed to be approved with the condition that the State submit by January 1, 1981, such commitments for adopted measures and schedules for the analysis of the other measures listed in Section 108(f) of the Act.

Ozone. EPA policy requires that minimum levels of control technology be provided in the nonattainment area plans. The NAPs must include adopted, legally-enforceable regulations reflecting the application of reasonably available control technology (RACT) to volatile organic compound sources covered in control techniques guidelines (CTGs) issued by January 1978. In addition, the plans must contain commitments to adopt RACT regulations for sources in categories to be addressed by future CTGs. For rural ozone nonattainment areas such as Truckee Meadows, the RACT requirements apply only to major sources (i.e., those with more than 100 tons/year of potential emission).

The Las Vegas Valley NAP indicates that, of the eleven source categories for which adopted RACT regulations are required, only seven categories exist within the nonattainment area. These categories are service stations (Stage I, gasoline vapor recovery), gasoline bulk plants, gasoline bulk terminals, fixed-roof tanks, solvent metal cleaning (degreasing), cutback asphalt, and surface coating at large appliance manufacturers. On July 24 and September 18, 1979, the State submitted as official SIP revisions Clark County Regulations (Sections 1, 50, 51, 52, 60) providing controls for these sources which, based on information contained in the CTGs, are sufficient to fulfill the requirements for RACT. These modified regulations and administrative provisions correct defects in earlier versions reviewed by EPA in the April 27 proposed rulemaking. The regulations are now fully approvable and satisfy the Part D requirement for RACT. The Las Vegas NAP also contains the required commitments to adopt RACT regulations for future CTG categories.

While the Las Vegas Valley ozone plan satisfies stationary source RACT requirements, EPA proposes the same conditions for approval of this portion of the ozone plan as are indicated above

for the CO plan, namely, that the State submit by January 1, 1981, commitments for adopted measures and schedules, for the analysis of the other Section 108(f) measures.

The Truckee Meadows NAP now includes adopted regulations for all six categories of RACT sources existing within the nonattainment area: service stations (Stage I, gasoline vapor recovery), gasoline bulk plants, gasoline bulk terminals, fixed-roof tanks, solvent metal cleaning (degreasing), and cutback asphalt. These regulations (Sections 010, 040) are fully approvable as amended in the July 24, 1979 revision and satisfy Part D requirements for RACT, based on information in the CTGs.

The Truckee Meadows NAP also contains the required commitement to adopt RACT regulations for future CTG categories. Therefore, EPA proposes to approve this portion of the Truckee Meadows ozone NAP.

7. Emissions Growth

Each NAP indicates that there will be no emissions growth from major new stationary sources, since new or modified sources will be subject to permit conditions requiring full offsets of emissions. Permit regulations containing these offset provisions have been submitted for the State, Las Vegas Valley (Clark County), and Truckee Meadows (Washoe County). Therefore, EPA proposes to approve this portion of the plans.

8. Annual Reporting

The Truckee Meadows and Las Vegas Vallay NAPs contain a commitment to submit annual reports of reasonable further progress and updated emissions inventories. Such annual reports are required for each nonattainment area. The annual report submitted by the State is expected to include the other nonattainment areas covered by this notice. Therefore, EPA proposes to approve this portion of the plans.

9. Permit Program

The Nevada State New Source Review (NSR) regulations apply to all major new or modified sources throughtout the State, except for Clark and Washoe Counties. Within Clark and Washoe Counties, the State has permitting authority over fossil fuel-fired electric steam generators; all other sources in these two counties are subject to the permit requirements of the Clark County Health District Air Pollution Control Regulations and the Washoe County District Board of Health Air Pollution Control Regulations

Amendments to the NSR regulations for the State (Article 13), Clark County (Section 15), and Washoe County (Section 030) were submitted on July 24, 1979, September 18, 1979, and March 17, 1980. These regulations now satisfy the requirements of Section 173 through the provision from emissions offsets, lowest achievable emissions rate, and the certification of compliance of all major sources within the State owned, operated, or controlled by the applicant. EPA interprets the offset provisions in these regulations to require submittal of external offsets as SIP revisions, and solicits comments on this interpretation. Therefore, EPA proposes to approve this portion of the plans.

10. Resources

While each NAP contains some identification and commitment of resources, none of the NAPs specifically identifies and budgets all financial and manpower resources necessary for plan implementation. This portion of the NAPs is proposed to be approved with the condition that the State submit these essential resource commitments by January 1, 1981.

11. Public and Government Involvement

Following submittal of summaries of public comments received on plan impact analyses, all NAPs now meet the requirements of Section 172(b)(9). EPA proposes to approve this portion of the plans.

12. Public Hearings

EPA proposes to approve this portion of the plan, since all plans and regulations were adopted by the State after reasonable notice and public hearing.

13. Extension Requirements

As referenced in the General Preamble (44 FR 20372), the 1979 ozone NAPs for rural nonattainment areas need not contain a specific demonstration of attainment. Therefore, the extension requirements of criterion 13 do not apply to Truckee Meadows. Since the State has requested an extension of the attainment date beyond December, 1982, for ozone and CO for Las Vegas Valley, the Las Vegas Valley NAP must meet the requirements of Sections 172(b)(11), 110(a)(3)(D), and 110(c)(5)(B).

Under Section 172(b)(11)(A), both Clark County and State regulations must include, in conjunction with the new source review permit program, a procedure and requirement for an analysis of alternative sites, sizes, processes, and controls, which demonstrates that the benefits of a major emitting facility outweigh environmental costs. While Clark County regulations were submitted satisfying the permitting process requirements of Section 172(b)(11)(A), the State must also submit regulations containing these provisions for review and permitting of fossil fuel-fired electric steam generators in Las Vegas Valley. This portion of the Las Vegas Valley CO and ozone NAP is proposed to be approved with the condition that the State submit these permit program elements by January 1, 1981.

As indicated in a Notice of Proposed Rulemaking (44 FR 26763, May 7, 1979) dealing with the State's vehicle inspection and maintenance (I/M) program, the requirements of Section 172(b)(11)(B) concerning I/M are fully satisfied. This finding is not altered by recent changes in the I/M program submitted on July 29, 1979 by the Governor. These revisions delay implementation of the I/M program, add additional requirements or improve the enforceability of the regulations. EPA is proposing to approve these revisions. Therefore, EPA proposes to approve this portion of the CO and ozone plan for Las Vegas Valley.

Sections 110(a)(3)(D) and 110(c)(5)(B) require that the Las Vegas Valley NAP contain commitments by agencies with legal authority to establish, expand, or improve public transportation to meet basic transportation needs. These basic transportation needs must be met as expeditiously as practicable using Federal grants and State and local funds to implement public transportation programs. All such commitments with respect to public transportation needs are not included in the plan. EPA proposes to approve this portion of the Las Vegas Valley CO and ozone plan with the condition that the State submit these commitments by January 1, 1981.

Section 172(b)(11)(C) requires that the plan identify other measures (included but not limited to those listed in Section 108(f) of the Act) that may be necessary to provide for attainment of the National Ambient Air Quality Standards no later than December 31, 1987. The Plan does contain a preliminary analysis of some transportation control measures; however, the plan does not provide detailed schedules for analysis of those measures reserved for further study nor does the plan contain commitments to implement those measures shown to be reasonably available. EPA proposes to approve this portion of the Las Vegas Valley NAP for CO and ozone with the condition that the State submit by January 1, 1981: (1) commitments and schedules to analyze further the Section

108(f) transportation control measures not yet included in the plan, as applied to the total transportation system of the nonattainment area; (2) a commitment to initiate implementation of those measures shown to be reasonably available.

To assure that the requirements of Section 176c and 176d are met EPA policy requires that the plan contain procedures for the determination of conformity with the SIP of any project, program, or plan over which the metropolitan planning organization has approval authority, and that the plan contain procedures to ensure that priority is given to the implementation of those portions of any plan or program with air quality related transportation consequences that contribute to the attainment and maintenance of the primary NAAQS. Specifically, these procedures should address the granting of priority to projects in the Transportation Improvement Program which contribute to the attainment and maintenance of the NAAQS. EPA policy requires that these procedures be submitted in the 1980 Annual Report.

14. Extension Requirements for VOC RACT

As discussed in the ozone section of Criterion 6, the RACT requirements are satisfied for the Las Vegas Valley and Truckee Meadows. Therefore, EPA proposes to approve this portion of the plans.

Public Comments

Under section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove revisions to the SIP submitted by the State. The Regional Administrator hereby issues this notice setting forth the SIP revisions described above as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office.

The EPA Region IX Office specifically invites public comment on whether to conditionally approve the items identified in this notice as deficiencies. EPA is further interested in receiving comment on the specified deadlines for the State to submit the corrections, in the event of conditional approval.

Comments received within 30 days after publication of this notice will be considered. Comments received will be available for public inspection at the EPA Region IX Office and at the locations listed in the ADDRESSES section of this notice.

The Administrator's decision to approve, conditionally approve, or disapprove the proposed revisions will be based on the comments received and on a determination whether the revisions meet the requirements of section 110(a)(2) and Part D of the Clean Air Act, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

EPA believes the available period for comments is adequate because:

(1) The NAPs and the I/M program have been available for public inspection and comment since they were the subject of Notices of Proposed Rulemaking on April 10, April 27, and May 7, 1979;

(2) The issues involved in the revisions submitted on July 24 and September 18, 1979, and March 17, 1980 are limited in scope and are sufficiently clear to allow comments to be developed in the available 30-day period; and

(3) EPA has a responsibility under the Act to take final action as soon as possible after July 1, 1979 on that portion of the SIP that addresses the requirements of Part D.

EPA has determined that this action is "specialized" and therefore, not subject to the procedural requirements of Executive Order 12044.

(Secs. 110, 129, 171 to 178 and 301(a) of the Clean Air Act as amended (42 U.S.C. §§ 7410, 7429, 7501 to 7508, and 7601(a)))

Dated: June 20, 1980.

Paul De Falco, Jr.,

Regional Administrator.

[FR Doc. 80-27805 Filed 9-8-80; 8:45 am]
BILLING CODE 6560-01-M

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40 CFR Part 52

[FRL-1600-2]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposes to approve two revisions to the Ohio State Implementation Plan for sulfur dioxide as it applies to the Interlake Incorporated Toledo Plant and The Koppers Company Incorporated Toledo Coke Plant which are located in Lucas County, Ohio. The proposed approval is based upon an overall emission reduction of 43.5 lbs/hr of sulfur dioxide from Koppers. The purpose of this notice is to invite public comment on U.S. EPA's proposed revision to the Ohio State Implementation Plan.

DATE: Comments must be received on or before October 9, 1980. Requests for a public hearing on this revision must be received no later than September 24, 1980.

ADDRESSES: Comments and requests for a hearing should be submitted to Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

The docket (#5A-80-1) for this revision is available for inspection and copying during normal business hours at the above address and at the Central Docket Section, West Tower Lobby, Gallery 1, U.S. EPA, 401 M. Street, S.W., Washington D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air Programs Branch, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6039.

SUPPLEMENTARY INFORMATION: On May 31, 1977 (42 FR 27588, 40 CFR Section 52.1881) U.S. EPA promulgated final regulations establishing a State Implementation Plan (SIP) for the control of sulfur dioxide (SO_2) for the majority of sources in Lucas County, Ohio. This proposed rule would amend that SIP as it applies to the Interlake Incorporated (Interlake) Toledo Plant and The Koppers Company Incorporated (Koppers) Toledo Coke Plant in Lucas County, Ohio.

Interlake has requested a site specific SIP revision for its Toledo Plant. Interlake owns three boilers at this facility each rated at 228.3 million BTUs per hour for a total of 684.9 million BTUs per hour. The present allowable SO_2 emission rate is 0.10 pounds of SO_2 per million BTU actual heat input for fossil fuel-fired steam-generating units, pursuant to 40 CFR Section 52.1881(b)(39)(xi)(A). Therefore, when operating at maximum capacity, the three boilers are allowed to emit 68.5 pounds of SO_2 per hour. At the time the SIP was promulgated by U.S. EPA, Interlake owned and operated a coke battery, a blast furnace, a pig iron casting facility, a steam generator and an electric power generator. Interlake has since sold the coke battery to Koppers and terminated operations at all other facilities except for the electric power generator facility which consists of the three boilers.

Interlake has stated that it will reduce the SO_2 emissions from these three units by operating at a lower load (i.e., 300 million BTU/hr maximum heat input combined). This would reduce the SO_2 emissions to 30.0 pounds/hour. Interlake has requested that 38.5 pounds per hour allowable be transferred to Koppers for its use. Thus, 30.0 pounds allowable per hour would be retained by Interlake for

its use at the three existing Interlake boilers.

Therefore, it is proposed that the site specific SIP revision for the Interlake Toledo Plant will decrease Interlake's hourly allowable SO_2 emissions from Boilers 4, 5 and 6 to 30.0 pounds per hour from the allowed 68.5 pounds per hour pursuant to 40 CFR Section 52.1881(b)(39)(xi)(A). Interlake shall reduce the maximum allowable heat input rate in the three boilers to 300 million BTUs per hour (combined) to comply with the new hourly allowable SO_2 emission rate. The remaining 38.5 pounds per hour of allowable SO_2 emissions will be acquired by the Koppers Toledo Coke Plant, Lucas County, Ohio, which is adjacent to the Interlake Plant. The allowable SO_2 emissions will be used by Koppers for offset purposes. In addition, Interlake shall be subject to emission monitoring and reporting requirements.

Koppers has requested a site specific SIP revision for its Toledo Coke Plant. Koppers has entered into a special terms and condition Permit to Install with The Ohio Environmental Protection Agency. The permit allows Koppers to install two new boilers, each rated at 48.8 million BTUs per hour. Since these two boilers will be located in an SO_2 nonattainment area of Lucas County, an emission limitation of 0.256 pounds per million BTU of SO_2 is required for the boilers. This emission limitation results in 25 pounds per hour of SO_2 emissions. The emission offsets required will be obtained from Interlake's boilers and the recently purchased Interlake coke battery.

The Interlake coke battery had an allowable SO_2 emission limitation of 4.0 pounds per ton of actual process weight input pursuant to 40 CFR Section 52.1881(b)(39)(xi)(B). This limit is equivalent to 192.68 pounds per hour of SO_2 from the coke battery. The sale of the coke battery also transferred the allowable SO_2 emissions to Koppers. Koppers now plans to reduce SO_2 emissions from the coke battery to 3.38 pounds per ton of product, which is equivalent to 162.62 pounds per hour. This is a 30.0 pound per hour reduction, which will offset the 25.0 pounds per hour that the two new boilers will produce. In addition, Interlake is reducing the load on its Boilers 4, 5 and 6, which have a total allowable SO_2 emission rate of 68.5 pounds per hour. Interlake is giving 38.5 pounds per hour of SO_2 emissions to Koppers along with the coke battery sale. These combined actions result in an overall reduction of 43.5 pounds per hour of SO_2 emissions from Koppers.

Both Interlake and Koppers submitted air quality analyses on June 29 and August 8, 1979, in support of their SIP revision requests. In 1978, violations of the primary and secondary SO_2 National Ambient Air Quality Standards were observed at these sites.

The existing and proposed facilities were modeled using U.S. EPA reference urban RAM Model. Toledo surface and Flint upper air meteorological data for 1964 were input to RAM. RAM receptor grid resolution varied from 0.1 to 0.5 km near the source to 1 km or less at greater distances.

The maximum net increases due to the proposed facility are below the ambient significant impact levels of 1 $\mu g/m^3$ (annual), 5 $\mu g/m^3$ (24-hour) and 25 $\mu g/m^3$ (3-hour). In addition, a net air quality benefit was demonstrated at a majority of receptors during periods of nonattainment.

Based upon the Agency's review of the technical data submitted, U.S. EPA has determined that approval of the proposed SIP will result in an improvement in the air quality in Lucas County and will not jeopardize the attainment and maintenance of the National Ambient Air Quality Standards. Therefore, U.S. EPA proposes to approve the revised emission limitations for Interlake Inc.'s Toledo Plant and the Koppers Company's Toledo Coke Plant.

Interlake is the first source in Ohio for which U.S. EPA is proposing to promulgate a regulation at a reduced operating load. In order to monitor this reduced operating load, U.S. EPA has determined that Interlake will be subject to the monitoring and reporting requirements of 40 CFR Section 52.1882(g). Any other source which receives an emission limitation based on a reduced operating load will also be subject to these requirements.

Final promulgation of this revision will follow an analysis of any comments submitted. Comments are being solicited.

Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels these other regulations, "specialized." I have reviewed this proposed regulation pursuant to the guidance in USEPA's response to Executive Order 12044, "Improving Environmental Regulations," signed March 29, 1979, by the Administrator and I have determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 110 of the Clean Air Act, as amended, 42 U.S.C. § 7410)

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart KK—Ohio

1. Section 52.1881 is amended by revising § 52.1881(b)(39)(xi)(A), by revoking § 52.1881(b)(39)(xi)(B), and by adding as a new section, § 52.1881(b)(39)(xvi):

§ 52.1881 Control strategy: Sulfur oxides (sulfur dioxide).

* * * * *

(b) Regulations for the control of sulfur dioxide in the State of Ohio.

* * * * *

(39) In Lucas County:

* * * * *

(xi) Interlake Steel or any subsequent owner or operator of the Interlake Steel facility in Lucas County, Ohio shall not cause or permit sulfur dioxide emissions from any stack at this facility in excess of the rates specified below:

(A) 0.10 pounds of sulfur dioxide per million BTU actual heat input for the fossil fuel-fired steam-generating units and the combined maximum hourly allowable heat input rate shall not exceed 300 million BTUs per hour.

* * * * *

(xvi) The Koppers Company Incorporated or any subsequent owner or operator of the Koppers facility in Lucas County, Ohio shall not cause or permit sulfur dioxide emissions from any stack at this facility in excess of the rates specified below:

(A) 0.26 pounds of sulfur dioxide per million BTU actual heat input for the two new fossil fuel-fired steam generating units.

(B) 3.38 pounds of sulfur dioxide per ton of actual process weight input for the coke battery.

* * * * *

2. Section 52.1882 is amended by adding a new paragraph (g) as follows:

§ 52.1882 Compliance schedules.

* * * * *

(g) Monitoring and reporting requirements for sources subject to reduced operating load requirements.

(1) Any owner or operator of any source of sulfur dioxide subject to a provision of § 52.1881 of this chapter which limits the operating level of any point source at any time shall, in addition to any other reporting requirements of this chapter, comply with the following:

(i) Install not later than the date by which compliance with the applicable emission limitation of § 52.1881 is

required a device(s) to determine and record the level of operation of each such point source;

(ii) Retain such records for at least two years; and

(iii) Report to the Administrator within 30 days of each such occurrence any period during which any source is operated above the specified operating level allowed by an applicable requirement of § 52.1881.

Dated: August 12, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80-27606 Filed 9-8-80; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 65

[Docket No. 9-80-8; FRL 1601-7]

State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Proposed Delayed Compliance Order for Guam Power Authority, Agana, Guam

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue a Federal Delayed Compliance Order (DCO) to Guam Power Authority (GPA), Agana, Guam. The DCO requires GPA to bring its two fossil-fuel fired steam generators at Piti, Guam, into compliance with Section 13.4 of Chapter 13, Control of Sulfur Dioxide, Guam Air Pollution Control Standards and Regulations, part of the Federally approved State Implementation Plan for the Territory of Guam. Because GPA is unable to comply with this regulation at this time and GPA will use a new means of emission limitation to achieve compliance with this regulation, the proposed DCO would establish an expeditious schedule requiring final compliance by May 15, 1984. Source compliance with the DCO would preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation of the SIP regulation covered by the DCO.

DATES: Written comments must be received on or before October 9, 1980 and requests for a public hearing must be received on or before September 24, 1980. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after twenty-one days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESSES: Comments and requests for a public hearing should be submitted to Director, Enforcement Division, EPA, Region IX, 215 Fremont Street, San Francisco, California 94105. The DCO, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Robert G. Kuykendall, Chief, Air and Hazardous Materials Branch, Enforcement Division, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105, Phone: (415) 556-6150.

SUPPLEMENTARY INFORMATION: GPA operates two fossil-fuel fired steam generators located in Piti, Guam. On April 23, 1979, GPA proposed the use of a new means of emission limitation for control of sulfur dioxide emissions from the fossil-fuel fired steam generators to meet the requirement of Guam SIP. The new means of sulfur dioxide emission control is the Flakt Hydro Flue Gas Desulfurization system which utilizes fresh seawater with no chemical additions to scrub the flue gas. Guam Environmental Protection Agency (hereinafter referred to as "GEPA") adopted a DCO and on June 25, 1979 submitted it to EPA for EPA's approval. On April 10, 1980, EPA advised GEPA that the DCO submitted by GEPA would not be approvable since it was issued prior to the adoption of Section 13.4 of Chapter 13, Control of Sulfur Dioxide, Guam Air Pollution Control Standards and Regulations and also failed to meet certain other procedural requirements. On April 11, 1980, GPA notified EPA that the two fossil-fuel fired steam generators known as Cabras Units 1 and 2 are in violation of the Guam SIP and that GPA waives any right it may have to a Notice of Violation, to a thirty day waiting period, and to an administrative conference under Section 113 of the Act. On April 15, 1980, GEPA requested that EPA issue a Federal DCO pursuant to Section 113(d)(4) of the Act in order to expedite the issuance of a DCO for GPA. GEPA also requested that the supporting document previously submitted by GEPA be considered by EPA in issuing the Federal DCO and fulfilling the requirements of Section 113(d)(4). After a thorough evaluation, EPA has determined that GPA's proposed sulfur dioxide emission reduction system does constitute a "new means of emission limitation" as defined by Section 113(d)(4) of the Clean Air Act. EPA, therefore, proposes to issue a DCO which requires final compliance with Section 13.4 of Chapter 13, Control of Sulfur Dioxide, Guam Air Pollution Control Standards and Regulations by May 15, 1984. The source has consented to the terms of the DCO and has agreed to meet the DCO's remaining increments during the period of this informal rulemaking. If the DCO is issued, source compliance with its terms would preclude further EPA enforcement against this source for violation of the applicable regulation covered by the DCO while the DCO is in effect. Enforcement against the source under the citizen suit provision of the Clean Air Act (Section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether EPA should issue the DCO.

Testimony given at any public hearing concerning the DCO will also be considered. After the public comment period and any public hearing, the Administrator of EPA will publish in the Federal Register the Agency's final action on the DCO in 40 CFR Part 65.

(Sec. 113 and 301 of the Clean Air Act, as amended (42 U.S.C. 7413 and 7601))

Dated: August 1, 1980.

Paul De Falco, Jr.,

Regional Administrator, Environmental Protection Agency, Region IX.

In consideration of the foregoing, it is proposed to amend 40 CFR Chapter 1, as follows:

PART 65—DELAYED COMPLIANCE ORDER

§ 65.90 [Amended]

1. By amending the table in § 65.90 Federal delayed compliance orders issued under Sections 113(d) (1), (3), and (4) of the Act, to reflect approval of the following order: Docket No. 9-80-8. The text of the order reads as follows:

U.S. Environmental Protection Agency; Region IX

In the Matter of Guam Power Authority, Piti, Guam. Proceeding under Section 113(d)(4) of the Clean Air Act, as Amended.

Docket No. 9-80-8.

Delayed Compliance Order.

This Order is issued this date pursuant to Section 113(d)(4) of the Clean Air Act, as amended, 42 U.S.C. 7413(d) (hereinafter referred to as the "Act") and contains a schedule for compliance, interim control requirements, and reporting requirements. Public notice, opportunity for a public hearing, and thirty (30) days notice to the Territory of Guam have

been provided pursuant to Section 113(d)(1) of the Act.

Findings

On April 11, 1980, Mr. John L. Kerr, Chairman of the Board, Guam Power Authority (hereinafter referred to as "GPA"), Agana, Guam sent a letter to Mr. Clyde B. Eller, Director, Enforcement Division, Region IX, United States Environmental Protection Agency (hereinafter referred to as "U.S. EPA"), concerning the operation of Units 1 and 2 of the Cabras Steam Power Plant at Piti, Guam (hereinafter referred to as Cabras Units 1 and 2). Mr. Kerr states in the April 11, 1980 letter that Cabras Units 1 and 2 are in violation of Section 13.4 of Chapter 13, Control of Sulfur Dioxide, Guam Air Pollution Control Standards and Regulations and further states that GPA waives any right it may have to a Notice of Violation, to a thirty day waiting period, and to an administrative conference under Section 113 of the Act. Section 13.4 of Chapter 13, Control of Sulfur Dioxide, Guam Air Pollution Control Standards and Regulations is a part of the Federally approved implementation plan for Guam.

On April 15, 1980, the Administrator, Guam Environmental Protection Agency (hereinafter referred to as "Guam EPA"), sent a letter to Paul De Falco, Jr., the Regional Administrator, Region IX, U.S. EPA requesting that a delayed compliance order (DCO) adopted on June 23, 1979 by GEPA and applicable to GPA with respect to the Cabras Units 1 and 2 and submitted to EPA for approval be withdrawn, and that, instead, EPA issue a Federal DCO pursuant to Section 113(d)(4) of the Act. The letter further requested that the supporting documents previously submitted by GEPA be considered by EPA in issuing the Federal DCO and fulfilling the requirements of Section 113(d)(4).

After a thorough investigation of all relevant facts, U.S. EPA has determined that:

1. GPA is unable to immediately comply with Section 13.4 of Chapter 13, Control of Sulfur Dioxide, Guam Air Pollution Control Standards and Regulations;

2. the control system proposed is a new means of emission limitation for control of sulfur dioxide emissions from fossil-fuel fired steam generators;

3. the use of this innovative technology is likely to be demonstrated upon expiration of this Order;

4. this means of emission reduction has a substantial likelihood to achieve final compliance at lower cost in terms of economic and energy savings and with substantial non-air quality environmental benefit over conventional method and technology.

5. such new means are not likely to be used without this Order

6. compliance with Section 13.4 of Chapter 13, Control of Sulfur Dioxide, Guam Air Pollution Control Standards and Regulations is impractical prior to or during installation of the new means; and,

7. that the issuance of this Order is consistent with the policy and intent of Section 113(d)(4) of the Act.

Order

After a thorough investigation of all relevant facts, including public comment, it is determined that the schedule set forth in this Order is as expeditious as practicable, and that terms of this Order comply with Section 113(d) of the Act. Therefore, it is hereby Agreed and Ordered that:

A. GPA shall proceed on a program of biological and environmental research on the marine ecosystem at Piti, such research to be directed toward an ultimate determination of the environmental feasibility of installing that Flakt Hydro Flue Gas Desulfurization system (hereinafter referred to as "seawater scrubber") on Cabras Units 1 and 2 as a means of continuous emission control in order to comply with Section 13.4 of Chapter 13, Control of Sulfur Dioxide, Guam Air Pollution Control Standards and Regulations.

B. The research program set out in Paragraph A shall be carried out in accordance with the detailed scope of work document (hereinafter referred to as the "the Plan") which GPA submitted on July 2, 1979 to the Director, Enforcement Division, Region IX, U.S. EPA.

C. GPA shall submit quarterly progress reports on the Plan to U.S. EPA in accordance with the following schedule:

(1) September 15, 1980—Quarterly report summarizing progress to August 15, 1980.

(2) December 15, 1980—Quarterly report summarizing progress to November 15, 1980.

(3) March 15, 1981—Quarterly report summarizing progress to February 15, 1981.

(4) June 15, 1981—Phase III report summarizing progress to May 15, 1981.

(5) September 15, 1981—Quarterly report summarizing progress to August 15, 1981.

(6) November 15, 1981—Final report.

D. If any delay is anticipated in meeting any requirements of this Order, GPA shall immediately notify U.S. EPA in writing of the anticipated delay and reasons therefor. Notification to U.S. EPA of any anticipated delay does not excuse the delay. All submittals and nofications to U.S. EPA, pursuant to this Order, shall be made to Clyde B. Eller, Director, Enforcement Division, Region IX, U.S. EPA, 215 Fremont Street, San Francisco, California 94105. In addition, all submittals and notifications required in this Order shall simultaneously be transmitted to the Guam EPA.

E. If at any time GPA shall decide not to complete the research program, then GPA should immediately notify U.S. EPA and the marine studies shall be deemed to have shown that the seawater scrubber will not meet applicable clean water requirements, and the provisions of Paragraph F(2) shall be immediately applicable.

F. By November 15, 1981, GPA shall advise U.S. EPA:

(1) That it has entered into a firm undertaking for the installation of a seawater scrubber, such installation to commence within three months and to be completed within two and one-half years of such notice; or

(2) If the marine studies shall have demonstrated that the seawater scrubber will not meet applicable clean water requirements, that GPA has entered into a firm undertaking for the installation on utilization of some alternate means of continuous emission reduction, such alternate means to be fully operational within two years from the date of such notice, except that if such alternate means shall be the continuous burning of low sulfur fuel oil, such means shall be fully operational within six months from the date of such notice.

G. At the time GPA notifies U.S. EPA that it will install the seawater scrubber or alternate means of continuous emission reduction pursuant to Paragraph F(1) or (2), it will also submit a compliance schedule to U.S. EPA with increments of progress toward final compliance (as specified in 40 CFR 51.1(q)), said compliance schedule, subject to approval by U.S. EPA, to become part of this Order. Further GPA shall certify to the Director, no later than fifteen (15) days after each increment of progress specified by such compliance schedule whether compliance has or has not been achieved and, if not, the reasons therefor.

H. Within 30 days of completion of construction of the seawater scrubber or alternate control means, GPA shall achieve full compliance with Section 13.4 of Chapter 13, Control of Sulfur Dioxide, Guam Air Pollution Control Standards and Regulations. GPA shall submit performance test results to U.S. EPA to demonstrate such compliance. The performance tests shall be conducted in accordance with 40 CFR 60.8 and 60.46.

I. GPA shall provide the U.S. EPA and Guam EPA at least 30 days notice prior to conducting any performance tests in order to afford EPA and Guam EPA an opportunity to evaluate the test methods and procedures to be used and to enable the Agencies to have an observer present to such testing.

J. Pursuant to Section 113(d)(7) of the Act, during the period of this Order GPA shall comply with the Air Quality Contingency plan Island-wide Power System, Piti-Cabras Complex as adopted November 1, 1978 and approved on January 31, 1979 by Guam Power Authority, U.S. Navy Public Works Center, Guam, Guam Environmental Protections Agency, and the Island-wide Power System Joint Coordinating Committee. The ambient sulfur dioxide monitoring method used by GPA in accordance with the Contingency Plan should be a Federal reference or equivalent method as defined by 40 CFR 50.1 and 40 CFR Part 53. GPA shall not only calibrate and maintain the monitors as recommended by manufacturers, but also follow the quality assurance and probe siting criteria for ambient air quality monitoring as specified in Appendices A and E to 40 CFR Part 58—Ambient Air Quality Surveillance. If such Contingency Plan is amended at anytime during the pendency of this Order a copy of such amended contingency plan shall be immediately submitted to U.S. EPA for approval. Until such approval by EPA, Guam Power Authority shall be required to comply with the Contingency Plan as adopted November 1, 1978. U.S. EPA has determined that the use of a low sulfur fuel oil during adverse air quality conditions as required by the Contingency Plan represents the best practicable system of interim emission reduction during the pendency of this Order and therefore satisfies the requirements of Section 113(d)(7) of the Act.

K. Nothing contained in these Findings or Order shall affect GPA's responsibility to comply with Territory of Guam laws or regulations or other Federal laws or regulations during the pendency of this Order.

L. GPA is hereby notified that its failure to meet the interim requirements of this DCO or to achieve final compliance by May 15, 1984 (or such earlier date as may be required in a revised compliance schedule established in accordance with Paragraph G) at the source covered by this Order may result in a requirement ot pay a noncompliance penalty in accordance with Section 120 of the Act, 42 U.S.C. 7420. In the event of such failure, GPA will be formally notified pursuant to Section 120(b)(3), 42 U.S.C. 7420(b)(3), and any regulations promulgated thereunder of its noncompliance.

M. This order shall be terminated in accordance with Section 113(d)(8) of the Act if the Administrator or his delegate determines on the record, after notice and hearing, that an inability to comply with Section 13.4 of Chapter 13, Control of Sulfur Dioxide, Guam Air Pollution Control Standards and Regulations no longer exists.

N. Violation of any requirement of this Order shall result in one or more of the following actions:

(1) Enforcement of such requirement pursuant to Section 113(a), (b), or (c) of the Act, 42 U.S.C. 7413(a), (b), or (c), including possible judicial action for an injunction and/or penalities and in appropriate cases, criminal prosecution.

(2) Revocation of this Order, after notice and opportunity for public hearing, and subsequent enforcement of Section 13.4 of Chapter 13, Control of Sulfur Dioxide, Guam Air Pollution Control Standards and Regulations in accordance with the preceding paragraph.

O. GPA is protected by Section 113(d)(10) of the Act against Federal enforcement action under Section 113 of the Act and citizen suits under Section 304 of the Act for violation of Section 13.4 of Chapter 13, Control of Sulfur Dioxide, Guam Air Pollution Control Standards and Regulations during the period the Order is in effect and GPA remains in compliance with the terms of such Order.

P. Nothing herein shall be construed to be a waiver by the Administrator of any rights or remedies under the Act, including, but not limited to Section 303 of the Act, 42 U.S.C. 7603.

Q. This Order shall become effective upon final promulgation in the Federal Register.

Date ———————

Administrator, U.S. Environmental Protection Agency.

GPA has reviewed this Order, consents to the terms and conditions of this Order, and believes it to be reasonable means by which GPA can achieve final compliance with Section 13.4 of Chapter 13, Control of Sulfur Dioxide, Guam Air Pollution Control Standards and Regulations.

Dated: July 24, 1980.

Frank G. Blaz,

General Manager, Guam Power Authority.

[FR Doc. 80-27800 Filed 9-8-80; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 122

[FRL 1601-1]

Consolidated Permit Regulations; Criteria for New Source Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Comments are solicited on a proposed revision of the criteria for distinguishing construction that creates a new source of water pollution discharges from construction that merely modifies an existing source. The proposed revision is intended to avoid the potential difficulties in applying the criteria published in the consolidated permit regulations on May 19, 1980.

DATES: Comments must be received on or before October 24, 1980.

ADDRESSES: Send comments to: Robert Brook, Permits Division (EN-336), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (202) 755-0750.

FOR FURTHER INFORMATION CONTACT: Robert Brook, Permits Division (EN-336), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (202) 755-0750.

SUPPLEMENTARY INFORMATION: On May 19, 1980, EPA published (45 FR 33290) as part of its consolidated permit regulations criteria for new source determinations under the National Pollutant Discharge Elimination System (NPDES) program of the Clean Water Act. 40 CFR § 122.66(b). That regulation provided that a new source could result from (1) construction of a source at a new or "green field" site, (2) construction at the site of an existing source of a new building, structure, facility, or installation which totally replaced the equipment causing the pollutant discharge from the existing source, or (3) construction at the site of an existing source of a new building, structure, facility, or installation that resulted in a change in the nature or quantity of pollutants discharged. This third situation presents the greatest problem in applying the regulation. If the construction of an addition, replacement, or alteration at the site of an existing source does not qualify as a new source under this third criterion, it then constitutes the modification of an existing source. The distinction in the May 19 regulation hinged on whether the construction resulted in a change in the nature or quantity of pollutants discharged by creating a new building, structure, facility, or installation. Upon reconsideration, EPA believes that this language could be interpreted to classify as new sources some structures that more appropriately should be considered as modifications of existing sources. Some industries typically modify or expand their plants by adding similar or related process equipment which itself constitutes a new building or structure. EPA does not think it appropriate to classify each such additional piece of equipment as a new source solely because it constitutes a new building or structure. Instead, it is appropriate to classify as a new source a facility that may happen to be located at the site of an existing source but that to a substantial degree functions independently of it.

We therefore have today published elsewhere in the Federal Register a suspension of § 122.66(b)(1) and (2). We propose to amend § 122.66(b)(1)(ii)(B) to provide that construction at the site of an existing source creates a new source (or new discharger) if it creates not only a new building, structure, facility, or installation, but one whose processes are substantially independent of the existing source. The "substantial independence" test would allow the addition of similar or related process or production equipment at the site of an existing source to be classified in many cases as a modification rather than a new source (or new discharger). Even the construction of a new facility with processes substantially independent of the existing source would create a new source only if there exist new source performance standards that independently apply to the new facility (and not merely to the existing source as modified by the new construction). A new facility with substantially independent processes but to which no new source performance standard applies would be a new discharger rather than a new source or a modification of an existing source. (Similarly, construction of a facility at a green field site or construction that totally replaces an existing source would be a new discharger if no new source performance standard applies to the new facility.)

For example, the addition of a structurally separate cracking unit at the site of an existing refinery that produces petroleum by the use of topping and catalytic reforming would be considered a modification of the existing source because the cracking unit would not be

a substantially independent process. Similarly, a pulp mill might expand its capacity by adding a new digester to four existing digesters. This, too, would be a modification of an existing source because the new digester would be integrated with the existing process equipment.

The addition of a new facility to produce petrochemicals at the site of an existing refinery, however, conceivably could involve substantially independent processes. But this new facility then would be a new discharger rather than a new source because the existing new source performance standards for petroleum refineries (40 CFR Part 419) do not apply independently to the petrochemical facility, but only to the entire refinery as modified by the addition of the petrochemical operations. Thus, the petrochemical unit would not itself constitute a new source.

An expansion of plant capacity by essentially replicating the existing facility would not be classified as a modification of an existing source, however, because the new facility *could* operate substantially independently of the existing facility and thus would appropriately be considered a new source. Similarly, a new facility may be substantially independent of the existing facility even though it uses the same waste treatment system, produces feedstock for the existing plant, or uses as its feedstock the product of the existing plant. For example, a new facility to produce diammonium phospate fertilizer by using as feedstock the ammonia produced as a byproduct by an existing phosphoric acid plant at the same site well might constitute a new source which for convenience is located at the site of the existing plant.

Accordingly, 40 CFR § 122.66(b)(1) and (b)(2) are proposed to be amended to read as follows:

§ 122.66 New sources and new discharges.

* * * * *

(b) *Criteria for new source determination.*

(1) A source is a "new source" if:

(i) It is constructed at a site at which no other source is located; or

(ii) It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(iii) Its processes are substantially independent of an exisiting source at the same site; and it meets the definition of "new source" in § 122.3. A source meeting the requirements of paragraphs (b)(1)(i), (ii), or (iii) of this section, is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger. See § 122.3.

(2) Construction on a site at which an existing source is located results in a modification subject to § 122.15 rather than a new source (or new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraphs (b)(1)(ii) or (iii) of this section but otherwise alters, replaces, or adds to existing process or production equipment.

Dated: September 2, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 80-27612 Filed 9-8-80; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Ch. I

[Docket No. FEMA PP-360]

Implementation of State Assistance Program for Training and Education in Emergency Mangement

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule sets forth a description of the FEMA training and education assistance program to the States. The program functions through State Cooperative Agreements and is designed to further comprehensive emergency management training including emergency preparedness planning, hazard mitigation, and disaster response and recovery. In response to State and local expressed needs, FEMA was formed to coordinate and manage all disaster planning and response in one Agency. The combined training responsibilities of predecessor agencies are now being administered by the Training and Education Office of FEMA using the State Cooperative Agreements and Regional Support Contracts as the vehicle to meet individual State training needs. This rule defines the objectives and elements of the program, the funding approach, and the State application/proposal.

DATE: Comments are due on or before September 30, 1980. It is intended after careful consideration has been given to the comments and appropriate adjustments made to make this regulation, which is primarily procedural, effective immediately on its adoption.

ADDRESSES: Send comments to Rules Docket Clerk, Federal Emergency Management Agency, Room 801, 1725 I Street, N.W., Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Dave McLoughlin, Assistant Director for Training and Education, Federal Emergency Management Agency, 1725 I Street, N.W., Washington, D.C. 20472, Telephone: (202) 254-9556.

SUPPLEMENTARY INFORMATION: Predecessor agencies of FEMA in cooperation with the various States conducted training programs in the past. The logic of combining a number of training programs into a comprehensive one was initially recognized by the States and they in turn became advocates of a merger of emergency programs. The training and education program, therefore, is not unlike that which has previously been conducted by several separate agencies in conjunction with the States. The States, independent commonwealths, and territories, will be the only eligible participants in the program. Discussions with the States as to the implementation of the program have been ongoing throughout the FEMA organization process and considerable public participation has taken place. Because of this open forum on the program, FEMA has determined that sufficient cause exists for making this rule effective immediately upon adoption. Also, in view of the need to implement this program as soon as possible for continuity in the States' training program, and since actual notice has been provided to all the States, further notice and public hearings appear unwarranted. Comments, however, are requested and will be considered before this rule is made final.

FEMA has the responsibility of identifying the multitude of constituencies requiring training and education in comprehensive emergency management. To simply train the key leaders, the emergency management officers, is not enough. Since the needs of State and local governments differ as to audiences desirous and in need of training due to legislative mandate and governmental structure, FEMA recognized the States' unique capacity to effectively select those audiences responsible for carrying out emergency management and related tasks, and tailoring the training to meet those needs. This intergovernmental cooperation in the training area is essential to the ultimate success of the overall program and for the safety and lives of our populace. Therefore, this program is designed to increase the existing capabilities of the States, to

allow them to identify new audiences in need of training, as well as to develop more effective methods of conducting training. This intergovernmental program is, in turn, expected to enhance the local capability making each jurisdiction more secure in its knowledge and ability to handle disasters and catastrophic events of all kinds. The States have asked for clear objectives and mission assignments in order that they may then plan the utilization of available Federal and State resources according to State and local needs.

Joint State and FEMA program objectives to be accomplished through the State Cooperative Agreement include the following: the design and delivery of training to meet emergency and disaster operational requirements; the presentation and management of training programs to disseminate emergency management concepts; to further intergovernmental operational response capability; to provide management development for emergency management staffs; to motivate the general public to practice emergency self-help; and to build confidence among public officials as to their capability to successfully manage crises.

FEMA has determined that an environmental impact statement is not needed for this program. A copy of the environmental assessment and the finding of no significant impact is available for inspection at the above address.

This rule in no way impacts on the small business sector and thus is not in conflict with the President's Memorandum of November 16, 1979.

Accordingly, it is proposed to amend Chapter I of Title 44, Code of Federal Regulations, by adding a new Part 360 as follows:

PART 360—STATE ASSISTANCE PROGRAMS FOR TRAINING AND EDUCATION IN COMPREHENSIVE EMERGENCY MANAGEMENT

Sec.

Authority: Reorganization Plan No. 3 [3 CFR 1978 comp. p. 329]; Exective Order 12127 [44 FR 19367]; Executive Order 12148 [44 FR 43239].

§ 360.1 Purpose.

The Emergency Management Training Program is designed to enhance the States' emergency management training program to increase State capabilities and those of local governments in this field, as well as to give States the opportunity to develop new capabilities and techniques. The Program is an ongoing intergovernmental endeavor which combines financial and human resources to fill the unique training needs of local government, State emergency staffs and State agencies, as well as the general public. States will have the opportunity to develop, implement and evaluate various approaches to accomplish FEMA emergency objectives as well as goals and objectives of their own. The intended result in an enhanced capability to protect lives and property through planning, mitigation, operational skill, and rapid response in case of disaster or attack on this country.

§ 360.2 Description of program.

(a) The program is designed for all States regardless of their present level of involvement in training or their degree of expertise in originating and presenting training courses in the past. The needs of individual States, difference in numbers to be trained, and levels of sophistication in any previous training program have been recognized. It is thus believed that all States are best able to meet their own unique situations and those of local government by being given this opportunity and flexibility.

(b) Each State is asked to submit an acceptable application, to be accompanied by a Training and Education (T&E) plan for a total of three years, only the first year of which will be required to be detailed. The remaining two year program should be presented in terms of ongoing training objectives and programs. In the first year plan applicants shall delineate their objectives in training and education, including a description of the programs to be offered, and identify the audiences and numbers to be trained. Additionally, the State is asked to note the month in which the activity is to be presented, the location, and cost estimates including instructional costs and participant's travel and per diem. These specifics of date, place, and costs will be required for the first year of any three year plan. A three year plan will be submitted each year with an application. Each negotiated agreement will include a section of required training (Radiological Defense), and a section including optional courses to be conducted in response to State and local needs.

(c) FEMA support to the States in their training program for State and local officials, has been designed around three Program elements. Each activity listed in the State Training and Education (T&E) Plan will be derived from the following three elements:

(1) Government Conducted Courses:

Such courses require the least capability on the part of the State. They are usually conducted through provisions in a FEMA Regional Support Contract and/or FEMA or other Federal agency staff. The State's responsibilities fall primarily into administrative areas of recruiting participants, making all arrangements for the facilities needed for presentation of the course, and the handling of the cost reimbursement to participants, though State staff may participate as instructors. These courses for example include:

(i) Career Development Courses: Phases I, II, and III,

(ii) Radiological Officer and Instructor Courses,

(iii) Technical Workshops on Disaster Recovery or Hazard Mitigation.

(2) Government and Recipient Conducted Courses:

Responsibilities in these courses fall jointly upon Federal and State government as agreed in the planning for the course. Courses in this category might include:

(i) Emergency Management Workshops,

(ii) Multijurisdictional Emergency Operations Simulation Training.

In this category also, it is expected that the State will be responsible for administrative and logistical requirements, plus any instructional activity as agreed upon prior to the conduct of the course.

(3) Recipient Conducted Courses:

This element requires the greatest degree of sophistication in program planning and delivery on the part of the State. Training events proposed by the State must be justified as addressing Emergency Management Training Program objectives. Additionally, they must address State or community needs and indicate the State's ability to present and carry out the Program of Instruction. Courses in this category could include:

(i) Radiological Monitoring,

(ii) Emergency Operations Simulating Training,

(iii) Shelter Management.

(d) In order that this three year comprehensive Training and Education Program planning can proceed in a timely and logical manner, each State will be provided three target appropriation figures, one for each of the three program years. States will develop their proposals, using the target figure to develop their scope of work. Adjustments in funding and the scope of

work will be subject to negotiation before finalization. Both the funding and the scope of work will be reviewed each year and adjustments in the out years will reflect increased sophistication and expertise of the States as well as changing training needs within each State.

(e) FEMA funding through the State Cooperative Agreement for the training activities is to be used for travel and per diem expenses of students selected by the States for courses reflecting individually needed or required training. Additionally, funds may be expended for course materials and instructor expenses. The funding provided in the State Cooperative Agreement is not for the purpose of conducting ongoing State activities or for funding staff positions to accomplish work to be performed under this Agreement. Nor is the Agreement for the purpose of purchasing equipment which may be obtained with the help of Personnel and Administrative funds. In cases where equipment has been identified as needed in the scope of work submitted with the application, and where it serves as an outreach to a new audience or methodology, equipment purchase may be approved at the time of initial application approval.

During FY 81 only, allowable cost will be funded at 100%. The projected program envisions a sharing of eligible costs in the future however.

§ 360.3 Eligible applicants.

Each of the 50 States, independent commonwealths, and territories is eligible to participate in a State Cooperative Agreement with FEMA. The department, division, or agency of the State government assigned the responsibility for State training in comprehensive emergency management should file the application.

§ 360.4 Administrative procedures.

(a) *Award.*

Each State desiring to participate will negotiate the amount of financial support for the training and education program. Deciding factors will be the scope of the program, a prudent budget, the number of individuals to be trained, and variety of audiences included which are in need of training. All these factors are part of the required application as discussed in Section 360.2

(b) *Period of Agreement.*

Agreements will be negotiated annually and will be in effect for a period of 12 months. Each agreement, however, will include a scope of work for three years as reflected in Section 360.2(b) to give continuity to the total training and education program.

(c) *Submission Procedure.*

Each State applicant shall comply with the following procedures:

(1) *Issuance of a Request for Application:* Each State emergency management agency will receive a Request for Application Package from the State's respective FEMA Regional Director.

(2) *How to Submit:* Each State shall submit the completed application package to the Regional Director of the Appropriate Region.

(3) *Application Package:* The Application Package should include:

(i) A transmital letter signed by the State Director of the agency tasked with emergency management responsibilities for that State.

(ii) A three year projected training and education scope of work including both "required" training and "optional" courses. The first of the projected three year program is to be detailed as to list of courses, description of training to be offered, audiences to be reached and numbers to be trained. Dates and locations of training as well as costs of delivery and student travel and per diem are to be estimated. Special instructions for this portion of the submittal will be included in the Application Package.

(iii) Standard Form 270 "Request for Advance or Reimbursement" as required by OMB Circular A-102 and FEMA General Provisions for Cooperative Agreements.

(d) *Reporting Agreements.*

Recipients of State Agreement benefits will report quarterly during the Federal Fiscal year, directly to the Regional Director of their respective Regions. The report should include a narrative of the training programs conducted accompanied by rosters for each event, agenda, and a summary financial statement on the status of the Agreement funds.

Any course or training activity included in the Scope of Work and not presented as scheduled should be explained in detail as to the reason for cancellation in the quarterly report. The costs allocated to this cancelled activity should be reporgrammed to another training activity approved by the Regional Director no later than the last day of the 3rd quarter, or released to the Region.

An evaluation of the degree to which objectives were met, the effectiveness of the methodology, and the appropriateness of the resources and references used should also be included in the quarterly report.

The report is due in the Regional Office no later than the 15th day of January, April, and July. A final report for the year is due the 15th of October.

§ 360.5 General provisions for State Cooperative Agreement.

The legal funding instrument for the State Assistance Program for Training and Education FEMA Is the State Cooperative Agreement. All States will be required to comply with FEMA General Provisions for the State Cooperative Agreement. The General Provisions for the State Cooperative Agreement will be provided to the States as part of the Request for Application package. The General Provisions will become part of the Cooperative Agreement.

Dated: September 2, 1980.

John W. Macy, Jr.,

Director.

[FR Doc. 80-27595 Filed 9-8-80; 8:45 am]

BILLING CODE 6718-02-M

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44 CFR Parts 59 and 60

National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This rule amends the National Flood Insurance Program regulations concerning AO zones (shallow flooding zones), and adds regulations for AH zones (also shallow flooding zones), which are currently not mentioned in the regulations. These changes are necessary due to changed flood mapping methods which permit the Federal Insurance Administration (FIA) to determine base flood elevations for shallow flooding areas characterized by "ponding" flooding.

DATES: Comments received on or before October 9, 1980, will be considered before this rule becomes final.

ADDRESS: Send comments to: Rules Docket Clerk, Office of General Counsel, Room 801, Federal Emergency Management Agency, Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Mr. Richard W. Krimm, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472. (202) 755-5581.

SUPPLEMENTARY INFORMATION:

A. *Explanation of Rule Change.*

Under the authority contained in the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et. seq.), the Federal Insurance Administration (FIA) proposes to amend §§ 59.1 and 60.3, of Title 44 (formerly appearing at former §§ 1909.1 and 1910.3 of Title 24).

Originally, FIA only mapped one type of shallow flooding zone—the AO zone, where the average depth of flooding is

one to three feet above local grade, where a clearly defined channel does not exist, where the flooding path is unpredictable, and where velocity flow may be evident. The earlier maps had no indication of flood depths for AO zones, but on more recent maps, the flooding depth in AO zones has been specifically indicated (e.g., AO (depth 2 feet) indicates a two foot flooding depth). Additionally, there are shallow flooding zones where FIA can determine base flood elevations relative to the National Geodetic Vertical Datum of 1929. This is an easier standand for rating and regulatory purposes. To avoid confusion between the shallow flooding zones with base flood elevations and those with an average depth of flooding above local grade, FIA has established the AH zone where base flood elevations are indicated.

Since the regulatory flood plain management standard in the AO zone will be relative to the highest adjacent grade to a proposed structure, "highest adjacent grade" is defined. Previously, AO zones were regulated relative to a depth number above the crown of the nearest street. This treatment assumed that all shallow flooding areas would be relatively flat, ponding areas, where elevating relative to the crown of the nearest street would provide an adequate protection level and a convenient reference point. However, this criterion is inadequate since many of the shallow flooding zones now being mapped are on slopes, where the nearest street may be well above or below the proposed construction site. For this reason, the protection level in AO zones will be relative to "highest adjacent grade," as defined in § 59.1 of the proposed rule change. This new standard will correspond to the mapping methodology, which determines the average depth of flooding over local grade.

The current definition of "area of shallow flooding" in § 59.1 mentions a VO zone as one type of shallow flooding zone. FIA has never designated a VO zone. This zone may be used at some time in the future, after Section 60.3 is amended to specify regulatory standards for the VO zone.

Whether or not a shallow flooding area will be designated as an AH or AO zone depends on the rapidity of change in the water surface elevation relative to the topographical information available for the shallow flooding area. The following types of shallow flooding areas generally indicate where AH and AO zone designations will be used.

(1) Flat, ponding areas, where shallow floodwaters accumulate, and little or no velocity flow is evident and a 10-year flood elevation does not occur or cannot be estimated. This type of shallow flooding area will normally be designated an AH zone.

(2) Sloping areas, where shallow floodwaters flow in a sheet, maintaining a relatively constant average depth above local grade. Normally, this type of shallow flooding area will be designated as an AO zone, unless the topographical information is detailed enough and the slopes are small enough to determine base flood elevations relative to mean sea level and adequately present their location on a map.

(3) Alluvial fan areas, where floodwaters flow out of confined paths in hilly or mountainous areas and spread over large areas of a valley in an unpredictable manner. Alluvial fan areas are normally found in arid regions of the western states. They will normally be designated AO zones. Alluvial fan areas are being studied in more detail by FIA and the findings may lead to separate regulation and rating of this hazard area.

AH zones will be regulated similarly to Zones A1–30, since both types of zones have base flood elevations. A flood protection level at the depth number above highest adjacent grade will be required for AO Zones. (A two foot flood protection level will be used if no depth number is indicated for the AO zone.) Aside from this different protection standard, AO zones will be regulated similarly to AH and A1–30 zones.

In summary, the AO and AH zones will be used in the following situations:

(1) The AO zones (with flood depths indicated) will be used primarily for sheet flow areas where the depth of flooding is from one to three feet, where a clearly defined channel does not exist, where the flooding path is unpredictable, where velocity flow may be evident, and where it is not cost effective to determine flood elevations relative to mean sea level. The regulatory flood plain management standard will be based on a flood depth number of one to three feet above adjacent grade.

(2) The AH zone will be used primarily for areas of ponded water, or sheet flow over areas of very low slope, where the depth of flooding is from one to three feet, where a clearly defined channel does not exist, where the flooding path is unpredictable, where velocity flow is minimal, where the 10-year flood does not exist or cannot be calculated, and where it is cost effective to determine flood elevations relative to mean sea level. The regulatory flood plain mangement standard will be based on the base flood elevation.

B. *Procedural Information.*

This proposed rule does not have a substantial impact upon the quality of the environment. A finding to that effect is included in the formal docket file and is available for public inspection and copying at the above address.

Interested persons may participate in this rulemaking by submitting written data, views, or arguments to the above address. Each person submitting a comment should include his name and address and refer to the document by the docket number indicated in the heading and give reasons for any recommendations. Comments received within thirty days of the date of this proposed rule will be considered before final action is taken on this proposal. Copies of all written comments received will be available for examination by interested persons. This proposed rule may change in light of the comments received. Accordingly, Parts 59 and 60, of Title 44 of the Code of Federal Regulations are proposed to be amended as follows:

PART 59—GENERAL PROVISIONS

1. Section 59.1 is amended to have the following definitions read as follows:

§ 59.1 [Amended]

"Area of shallow flooding" means a designated AO, AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flodding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Area of special flood hazard" is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refinded into Zones A, AO, AH, A1–99, VO, or V1–30.

"Special hazard area" means an area having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards, and shown on an FHBM OR FIRM as Zone A, AO, A1–99, AH, VO, V1–30, M or E.

2. Section 59.1 is further amended by adding a new definition—"Highest adjacent grade."

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

PART 60—CRITERIA FOR LAND MANAGEMENT AND USE

60.3 [Amended]

3. Section 60.3(c) introductory paragraph is amended to read as follows:

(c) When the Administrator has provided a notice of final flood elevations for one or more special flood hazard areas on the community's FIRM and, if appropriate, has designated other special flood hazard areas without base flood elevations on the community's FIRM, but has not identified a regulatory floodway or coastal high hazard area, the community shall:

* * * * *

4. Section 60.3(c)(1) is amended by inserting the words, "AH zones," between the words "unnumbered A zones" and "and AO zones."

5. Section 60.3(c)(2) and (3) are amended by inserting the words "and AH zones" between the words "Zones A1–30" and "on the community's FIRM," wherever they appear.

6. Section 60.3(c)(7) is revised to read as follows:

(7) Require within any AO zone on the community's FIRM that all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified);

7. Section 60.3(c)(8) is revised to read as follows:

(8) Require within any AO zone on the community's FIRM that all new construction and substantial improvements of nonresidential structures (i) have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or (ii) together with attendant utility and sanitary facilities be completely floodproofed to that level to meet the floodproofing standard specified in § 60.3(c)(3)(ii);

8. Sections 60.3(c) is amended by adding a new subparagraph (11) to read as follows:

(11) Require within Zones AH and AO, adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.

(42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978 (3 CFR 1978 Comp. 329) and Executive Order 12127 (44 FR 19367)).

Catalog of Domestic Assistance Number 83.100 Flood Insurance.

Issued: July 24, 1980.

Gloria M. Jimenez,

Federal Insurance Adminstrator.

[FR Doc. 80-27596 Filed 9-8-80; 8:45 am]

BILLING CODE 6718-02-M

44 CFR Part 67

[Docket No. FEMA 5894]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872, in Alaska and Hawaii call Toll Free Line (800) 424–9080, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-Year) Flood Elevations

State	City/town county	Source of flooding	Location	#Depth in meters above ground
Commonwealth of Puerto Rico	Rio Tallaboa Basin	Rio Tallaboa	40 meters upstream of intersection of Rio Tallaboa and Puerto Rico Highway 127.	#6.0
			Intersection of Rio Tallaboa and Puerto Rico Highway 132	#40.5
		Rio Guayanes	10 meters downstream of intersection of Rio Guayanes and Puerto Rico Highway 386.	#72.5
		Caribbean Sea	At the mouth of Rio Tallaboa	#1.8

Maps available for inspection at Puerto Rico Planning Board, Minillas Government Center, North Building, 14th Floor, Santurce, Puerto Rico.

Send comments to Honorable Carlos Romero Barcelo, La Fortaleza, San Juan, Puerto Rico 00902.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: August 26, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-27624 Filed 9-8-80; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF EDUCATION

45 CFR Parts 100a and 100b

Education Division General Administrative Regulations (EDGAR); Grant Programs Without Specific Regulations

AGENCY: Department of Education.

ACTION: Proposed rules.

SUMMARY: These proposed rules establish procedures for the award of grants in programs that do not have specific program regulations. They establish a general framework of the rules that are necessary to make orderly awards consistent with the authorizing statute.

DATES: All comments must be received on or before November 10, 1980.

ADDRESSES: All written comments should be addressed to Kenneth Depew, Office of General Counsel, Division of Regulations Management, U.S. Department of Education, Room 2134 FOB–6, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Kenneth Depew. Telephone (202) 245–7091.

SUPPLEMENTARY INFORMATION: These proposed rules would establish procedures and standards for administering grant programs that do not have specific regulations of their own.

They are proposed in an effort to find a new solution to a longstanding problem. The Department of Education is authorized by law to carry out a number of programs that have never received an appropriation and may never receive one.

These programs pose a special problem. If the Department has no regulations for such programs, they may never be funded, because the first year's appropriation cannot be spent in an orderly and responsible way.

At the same time, writing a complete set of regulations for such programs has obvious drawbacks. In many cases, it is a waste of administrative resources. Moreover, administrative experience suggests that if a program is not funded within a year or two of the enactment of the authorizing legislation, later appropriations are often made for specific purposes that differ, slightly or greatly, from the program originally envisioned. Regulations written as an academic exercise are seldom adequate to the newly perceived needs that lead to a later appropriation.

These proposed rules offer an alternative solution. They establish a general framework of the rules that are necesssary to make orderly awards consistent with the authorizing statute. It is the expectation of the Department that reliance on these proposed rules will be a temporary expedient, employed only during the first year in which a previously unfunded program is funded. While the program is being administered in the first year, draft rules covering later years will be proposed and made final. This would allow the final rules to reflect not only the new priorities that generated the appropriation but also the first year's administrative experience.

If necessary, the Department may supplement these rules soon after the first appropriation, by publishing a notice in the Federal Register that interprets the statute. If the authorizing legislation cannot be implemented without program-specific regulations (for example, if the authorizing legislation mandates regulations on specific topics), the Department will continue its practice of writing rules even in the absence of an appropriation.

The specific provisions of the proposed rules are simple. They establish the principle that a program without regulations will be administered under the authorizing legislation and, to the extent consistent with the authorizing legislation, under the General Education Provisions Act (GEPA) and the Education Division General Administrative Regulations (EDGAR). In many cases, particularly formula grant programs, this will suffice. The proposed rules also deal with the issues that are most liklely to arise in programs administered under these provisions. For example, in discretionary grant programs, these proposed rules would distribute "points" for the criteria used in evaluating applications in a federally administered discretionary program. Programs without regulations will judge applications under the criteria established by EDGAR as well as two additional criteria—the need for the applicant's project and the extent to which the applicant's project carries out the statutory purposes. In order to further "tailor" the selection criteria to the program, fifteen points of a possible 100 may be redistributed among the listed evaluation criteria.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the end of the comment period will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, at the Department of Education, Room 2134, FOB–6, 400 Maryland Avenue, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

The reader will find a citation of statutory or other legal authority in parentheses after each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance numbers not assigned. Part I of OMB Circular A–95 does not apply.)

Dated: August 27, 1980.

Shirley M. Hufstedler,

Secretary of Education.

The Secretary proposes to amend Parts 100a and 100b of Title 45 as follows:

1. Section 100a.1 is amended by revising the introductory paragraph, redesignating that paragraph as paragraph (a), and by adding a new paragraph (b), to read as follows:

§ 100a.1 Programs to which Part 100a applies.

(a) The regulations in Part 100a apply to the programs of the Education Division that are listed in the table following this section. In addition to the name of the program, the table gives the statute that authorizes the program, the regulations that implement the program, and the number that the Catalog of Federal Domestic Assistance (CFDA) gives to the program.

Note.—* * *

(b) If a direct grant program does not have implementing regulations, the Secretary implements the program under the authorizing statutes and, to the extent consistent with the authorizing statute, under the General Education Provisions Act and the regulations in this part. For the purposes of this part, the term "direct grant program" does not include a program whose authorizing statute provides a formula for allocating program funds among eligible States.

Cross-reference.—Section 100b.1 Programs to which Part 100b applies.

Note.—See § 100a.101(c) for a description of the information in the application notice for a discretionary grant program that does not have regulations; § 100a.200(b) for a description of a discretionary grant program; § 100a.200(c) for a description of formula grant programs; and § 100a.210 for the selection criteria for discretionary grant programs that do not have regulations.

* * * * *

(20 U.S.C. 1221e-3(a)(1))

2. Section 100a.101 is amended by adding a new paragraph (c) to read as follows:

§ 100a.101 Information in the application notice that helps an applicant apply.

* * * * *

(c) If a discretionary grant program does not have implementing regulations, the application notice describes—

(1) The purposes of the statute that authorizes the program;

(2) The needs recognized in the authorizing statute;

(3) Other interpretations of the statute adopted by the Secretary that will significantly affect the administration of the program;

(4) Inconsistencies, if any, between the authorizing statute and the General Education Provisions Act or the regulations in this part;

(5) How the criteria in § 100a.210 of EDGAR apply to an application; and

(6) How the Secretary will distribute the points reserved under § 100a.210(c).

(20 U.S.C. 1221e-3(a)(1))

3. A new § 100a.210 is added to read as follows:

§ 100a.210 Selection criteria for a discretionary grant program that does not have regulations.

(a) *How this section works.* (1) If a discretionary grant program does not have implementing regulations, the Secretary uses the criteria in this section to evaluate applications for new grants under the program.

(2) The maximum score for all of the criteria in this section is 100 points.

(3) Subject to paragraph (c) of this section, the maximum score for each criterion is indicated in parentheses with the criterion.

(b) *The criteria.*

(1) *Meeting the purposes of the authorizing statute.* (30 points)

(i) The Secretary reviews each application for information that shows the project will meet the purposes of the statute that authorizes the program.

(ii) In conducting this review, the Secretary looks for information that describes—

(A) The objectives of the project; and

(B) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points)

(i) The Secretary reviews each application for information that shows the project meets specific needs recognized in the statute that authorized the program.

(ii) In conducting this review, the Secretary looks for information that—

(A) Describes the needs addressed by the project;

(B) Describes how the applicant identified those needs;

(C) Describes how those needs will be met by the project; and

(D) Describes the benefits to be gained by meeting those needs.

(3) *Plan of operation.* (15 points)

The Secretary evaluates each application on the basis of the criterion in § 100a.202.

(4) *Quality of key personnel.* (7 points)

The Secretary evaluates each application on the basis of the criterion in § 100a.203.

(5) *Budget and cost effectiveness.* (5 points)

The Secretary evaluates each application on the basis of the criterion in § 100a.204.

(6) *Evaluation plan.* (5 points)

The Secretary evaluates each application on the basis of the criterion in § 100a.205.

(7) *Adequacy of resources.* (3 points)

The Secretary evaluates each application on the basis of the criterion in § 100a.206.

(c) *Weighing the criteria.* (15 points)

The Secretary distributes an additional 15 points among the criteria listed in paragraph (b) of this section. The Secretary indicates in the application notice for the program how these 15 points are distributed.

(20 U.S.C. 3474)

Cross-reference.—See § 100a.101 Information in the application notice that helps an applicant apply.

4. Section 100b.1 is amended by revising the introductory paragraph, redesignating that paragraph as paragraph (a), and by adding a new paragraph (b) to read as follows:

§ 100b.1 Programs to which Part 100b applies.

(a) The regulations in Part 100b apply to the programs of the Department of Education that are listed in the table following this section. In addition to the name of the program, the table gives the statute that authorizes the program, and the number that the Catalog of Federal Domestic Assistance (CFDA) gives to the program.

Note.—* * *

(b) If a State-administered program does not have implementing regulations, the Secretary implements the program under the authorizing statute and, to the extent consistent with the authorizing statute, under the General Education Provisions Act and the regulations in this part. For the purposes of this part, the term "State-administered program" means a program whose authorizing statute provides a formula for allocating program funds among eligible States.

* * * * *

(20 U.S.C. 1221e-3(a)(1))

5. Section 100b.102 is amended by revising the introductory phrase and by adding a new paragraph (x) and a cross reference, to read as follows:

§ 100b.102 Definition of "State plan" for Part 100b.

As used in this part "State plan" means any of the following documents:

* * * * *

(x) *Programs that do not have regulations.* If a State-administered program does not have implementing regulations, the State plan must include the documents that the authorizing statute for the program requires a State to submit to receive a grant.

(20 U.S.C. 1221e-3(a)(1))

Cross-reference.—See § 100b.1 Programs to which Part 100b applies. This section includes a definition of "State-administered program" and a table of citations for the programs listed in § 100b.102.

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FEDERAL COMMUNICATIONS COMMISSION.

47 CFR Part 73

[Docket 21313; RM-2646; RM-3038; RM-3040; RM-2717; RM-3039; FCC 80-477]

AM Stereophonic Broadcasting

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order and further notice of proposed rule making.

SUMMARY: Various petitions for "special relief" in the matter of the Commission's April 9, 1980, selection of the Magnavox system of AM stereophonic transmission are denied by *Memorandum Opinion and Order,* to the extent that they are not granted through the adoption of the *Further Notice of Proposed Rule Making.* The intent of the *Further Notice of Proposed Rule Making* is to solicit additional technical information deemed necessary for the completion of the FCC Docket 21313 file and to ensure selection of the best of five proposed AM stereo transmission systems. Additionally, the *Notice* sets forth the Commission's AM stereo system evaluation and selection methodology for public comment.

DATES: Comments must be filed by December 9, 1980, and reply comments by January 8, 1981.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554.

FOR FURTHER INFORMATION CONTACT: Federal Communications Commissions, Broadcast Bureau, Policy and Rules Division, Mr. James E. McNally, Jr.at (202) 632–9660.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order and Further Notice of Proposed Rulemaking

Adopted: July 31, 1980.

Released: September 11, 1980.

By the Commission: Commissioners Quello and Jones concurring in the result.

1. On April 9, 1980, the Commission considered a proposed *Report and Order* in the matter of AM stereophonic broadcasting. The Broadcast Bureau recommended that the Commission adopt rules which would have provided minimum technical standards for all five of the formally proposed systems without selecting a particular AM stereophonic system.[1] On the same agenda, the Office of Science and Technology recommended that the Commission adopt a single AM stereo system. After a lengthy debate, the Commission decided that it would select a single system, although it generally endorsed the concept of the marketplace making such selections where a viable process could exist. Accordingly, based upon the information before it at that time, the Commission directed the Broadcast Bureau and the Office of Science and Technology to prepare a *Report and Order* adopting rules to choose a single AM stereo system and explaining thoroughly the reasoning upon which the choice was based.

2. Subsequent to that Commission meeting, a number of petitions and pleadings have been filed with the Commission requesting, *inter alia,* oral argument before the Commission *en banc,* release of the evaluation table ("matrix") discussed by the Commission at its April 9th meeting, and rescission of the Commission's tentative decision to select the Magnavox system.[2] These matters are discussed *infra.*

3. Immediately following the April 9th meeting the Broadcast Bureau and the Office of Science and Technology, pursuant to the Commission's instructions, began the preparation of a *Report and Order.* Given the controversy surrounding this matter, as highlighted by the petitions for oral argument and other relief, the Commission's technical staff undertook an even more comprehensive examination of the record compiled in this proceeding. As described in detail, *infra,* the staff's first evaluation was based upon a review of the comments and reply comments with relative judgments used as the basis for the ratings contained in the original evaluation table ("matrix"). In its further examination, the staff utilized a data quantification process so that system performance characteristics could be utilized in the evaluation table and thereby reduce reliance upon the more qualitative relative judgments. Even under this revised process, however, it has not been possible to quantify all system performance characteristics. It still appears that further empirical data is needed in some areas in order to carry out a more complete analysis of these systems. Accordingly, before the Commission finally selects an AM stereo system, we believe that additional data and information are desirable.

4. We believe that the most expeditious and fair way to proceed at this stage of the proceeding is by issuing a *Further Notice of Proposed Rule Making* so that all parties may have full opportunity to supplement their record showings. We also see no reason at this time to withhold either the original evaluation table or the revised table. We believe that our selection process will, therefore, be made clear to all interested parties and, further, will be open to full comments and evaluation. Additionally, we have prepared a list of specific questions which will be directed to each system proponent. We emphasize that our purpose is not in any way to delay the selection of an AM stereo system but, rather, to base our final determination upon a full, complete, and accurate record.

5. The following is the AM stereo evaluation table which was before the Commission when it issued instructions to the staff to prepare a *Report and Order* on April 9, 1980.

[1] The AM stereo transmission systems under consideration are: (a) the Magnavox Consumer Electronics Co. (Magnavox), an AM/PM system; (b) the Belar Electronics Laboratory, Inc. (Belar), an AM/FM system; (c) the Kahn Communications, Inc. and Hazeltine Corporation (Kahn/Hazeltine), an independent side-band system (ISB); (d) the Motorola, Inc. (Motorola), a "Compatible Quadrature Modulation" (C-Quam) system; and (e) the Harris Corporation (Harris), a "Variable Compatible Phase Modulation" (V-CPM) system. Additionally, F.T. Fisher's Sons, Ltd. (Fisher) has proposed a system (hereinafter referred to as the "Fisher" system) which may generally be described as a modification of the originally proposed Harris CPM system, utilizing signal sampling techniques. The Fisher system has only been presented on a theoretical basis. Absent any "real world" laboratory or on-the-air testing, we will not be able to give it futher consideration in this proceeding.

[2] Pleadings have been filed by Kahn Communications, Inc., Hazeltine Corporation, Motorola, Inc., Magnavox Consumer Electronics Co., American Broadcasting Company, Inc., and the Consumer Electronics Division of the Electronics Industries Association and the Stations' Committee for AM Stereo. A listing of these pleadings is given in Appendix B.

Initial AM Stereo System Evaluation Table

Evaluation Category	MAGNAVOX	MOTOROLA	_____	_____	_____
Numbers in parentheses ( ) indicate the maximum possible scores in the various categories or subcategories.	MAGNAVOX	MOTOROLA	HARRIS	BELAR	KAHN/HAZELTINE
I. Monophonic compatibility (15)	12	11	7	12	11
II. Interference characteristics:					
(1) Occupied bandwidth (10)	7	5	9	5	8
(2) Protection ratios (10)	5	3	8	5	7
III. Coverage (10)	7	6	6	5	5
IV. Transmitter stereo performance:					
(1) Distortion (10)	8	7	3	9	2
(2) Frequency response (10)	9	4	5	10	7
(3) Separation (10)	9	9	6	10	2
(4) Noise (10)	7	8	7	6	6
V. Receiver stereo performance:					
Propagation degradation (5)	3	5	4	3	5
Directional antenna effects (5)	3	3	4	3	3
VI. Mistuning effects (5)	3	3	4	3	3
Tentative total score (100)	73	64	63	71	59

6. The evaluation criteria or categories in the preceding table are derived from the various technical concerns raised by the Commission in the *Notice* for the most part, but several performance factors of ongoing interest are also included so as to allow for a sufficiently comprehensive evaluation of the various systems. Each evaluation criterion is defined as follows:

Monophonic compatibility: The measure of the average harmonic distortion (generally, the data submitted was too sparse to permit consideration of intermodulation distortion as well) over the range of 50–5000 Hz under the condition of left or right channel [3] only stereophonic transmission, taken from the audio output of an envelope detector type of monophonic station modulation monitor. We believe this approach is more desirable than that taken by the National AM Stereophonic Radio Committee (NAMSRC), which was a measurement of the increase in distortion resulting from mistuning, since we believe that individuals will take the trouble to tune a receiver to the point where the station's general audio quality is perceived as optimum. What is important, we feel, is the distortion present under optimum tuning conditions. We selected the condition of L or R only since it represents a good compromise between the extreme conditions of main channel only (L=R, monophonic) or stereophonic channel only (L=−R, a rarely encountered condition) modulation. Monophonic modulation monitor distortion measurements were preferred since such devices are wideband in nature and different models could be expected to yield similar results. In some cases, however, only samples of various receiver distortion measurements were presented and an estimate had to be made as to what the distortion would have been had it been measured on a monophonic modulation monitor.

Occupied bandwidth: This is defined in Section 2.202(a) of the Commission's Rules as the frequency bandwidth such that, below its lower and above its upper frequency limits, the mean powers radiated are each equal to 0.5% of the total mean power radiated by a given emission. For the purpose of this proceeding, an equivalent definition would be the frequency range over which the radiated emission spectrum exceeds −26 dB relative to the carrier as measured on a spectrum analyzer with 300 Hz bandwidth. In more simplistic terms it is a measure of the spectrum required for the proper operation of an AM stereo transmission system. This measurement was taken by reviewing spectrum analyzer displays of the various systems' performance under the NAMSRC-recommended modulation conditions.[4]

Protection Ratio: Section 73.37 of the Commission's Rules generally summarizes protection ratios in terms of signal strength contours for the various classes of stations for the co-channel and first, second and third adjacent channel conditions. These desired and undesired station signal strengths which exist at the edge of station service contours are used as a basis for evaluating the co-channel and adjacent channel susceptibility of a receiver, following the approach taken by NAMSRC in its test A.7. Again, the "4 tone test" (see footnote 4) is used to modulate the proponent's AM stereo transmission system and the resulting "noise" is measured with respect to the desired 85% amplitude-only modulated station for the co-channel and various adjacent channel conditions. Thus, the term "protection ratio" as used in this proceeding, is a measure of the audio "noise" or interference generated by various conditions of stereophonic operation relative to a signal of a desired station. In reviewing the information provided by the system proponents, we considered (in addition to the usual modulation modes of L=R, L=−R, L only and R only) the NAMSRC-recommended "stress test" of 45% AM modulation by the right channel containing 400 Hz and 9500 Hz tones, and similar modulation by the left channel containing 2500 Hz and 5500 Hz tones.

Coverage: By this we mean any loss in service area, relative to the present monophonic service area, which takes place as a result of stereophonic operation. The two conditions of interest are stereo transmitter to mono receiver and stereo transmitter to stereo receiver.

Stereo Separation: A measure, in dB, of the isolation between the left and right channels over the frequency range 50–5000 Hz for various levels of modulation.

Stereo Frequency Response: A measure, in dB, of the uniformity of system response over the frequency range 50–10000 Hz for various levels of modulation.

Stereo Distortion: A measure, in percentage or dB, of the harmonic distortion resulting from a condition of left or right only modulation. Consideration of intermodulation distortion was not possible due to the limited amount of information provided.

Stereo Noise: A measure, in dB, of the signal-to-noise ratio of a stereo transmission as received on an ideal stereo decoder in a closed circuit configuration.

Mistuning Effects: A measure of the increase in distortion in a monophonic receiver as a result of various degrees of off-frequency tuning of a stereo transmission. This takes place because as a monophonic receiver is tuned through a stereo station transmission, varying amounts of stereophonic (L–R) information will be blended with the desired main channel (L+R) information to produce an unbalanced monophonic program and increased harmonic and intermodulation distortion.

7. The system scores on the evaluation table given in paragraph 5 resulted from the consensus opinion of Commission engineers who reviewed the comments filed. In a number of cases (which will be discussed subsequently) desired information was not submitted by a system proponent and it was necessary to make engineering estimates of anticipated system performance. All in all, the system ratings indicated in the initial table should be regarded as based upon engineering judgments of the different systems' operation.

8. After the April 9 meeting the Commission engineering staff began a second phase of its review of the technical data. The second phase was begun in order to validate the initial work that had been done and, as discussed below, to allow for the preparation of a more complete *Report and Order*. It was not anticipated that the outcome of the review would indicate a system other than Magnavox would be superior in its performance characteristics. Rather, it was felt that a

[3] Subsequently, the left and right channels will be referred to as L or R, respectively. Also, L−R is used to indicate the main (monophonic) channel and L–R is used to indicate the difference (stereophonic) channel.

[4] The NAMSRC-recommended "4 tone test" (A.6) was used, where the transmitter is modulated 35% wth a 400 Hz tone, 25% with a 2500 Hz tone, 15% with a 5500 Hz tone and 10% with a 9500 Hz tone. We reviewed the data with respect to 85% L+R, 85% L=−R, 42.5% L only and 42.5% R only modulation. We decided that the 85% 8 kHz L−R "stress test" was too atypical of real world conditions, so the information which was provided concerning this facet of system operation was not considered.

second review would furnish additional justification for the initial selection of the Magnavox system. It was also felt that the *Report and Order* resulting from such an analysis could not only document the rationale and methodology leading to the particular system selection but should also, through a thorough and complete discussion, anticipate most, if not all, of the concerns and objections which could be raised by losing system proponents in a reconsideration proceeding and dispose of them in a straightforward manner. Such an approach was felt desirable to permit the rapid introduction of AM stereo service. This could only occur, we reasoned, if our initial selection was bolstered with a methodical step-by-step evalution of each of the proposed systems.

9. Thus, it was determined that the second review should again address the same areas outlined in the initial evaluation table (with minor improvements as discussed below). The second review would make explicit as many engineering judgments as possible, however, and place emphasis on a quantitative treatment of experimental data furnished by the proponents and others. In fact, it was felt that quantification of the data would minimize the need for engineering judgment once criteria, weights, maximum and minimum system performance limits (where possible) and scoring procedures were determined. Thus, depending upon the reliability and accuracy of the submitted data, the system evaluation process would be as objective and as accurate as possible.

10. During the second phase of the AM stereo system review process, we also are-examined the evaluation table itself to see if the addition of any new evaluation factors was warranted, or if the relative weighting among the various categories should be shifted. We decided not to add, delete or modify the weighting of any evaluation factors but we did make some minor rearrangements for the sake of clarity and categorization. There is no substantive difference between the initial evaluation tabie and the revised one, with regard to categories considered.

11. The evaluation table which follows indicates our assessment of the five proposed AM stereo systems at the present time. Asterisks (*) indicate instances in which data in the record either are inadequate or are believed to be erroneous or inconsistent with other data. This does not mean that we are unable to rate the systems in the indicated categories; but that we would prefer to defer such action pending submission of additional information. These specific areas will be discussed in later paragraphs.

Revised AM Stereo System Evaluation Table

Evaluation category	MAGNAVOX	MOTOROLA	HARRIS	BELAR	KAHN
Numbers in parenthesis ( ) indicate the maximum possible scores in the various categories or sub-categories.					
I. Monophonic compatibility:					
(1) Average harmonic distortion (15)	*	9	6	*	12
(2) Misturing effects (5)	5	5	5	5	5
II. Interference characteristics:					
(1) Occupied bandwidth (10)	10	10	10	10	10
(2) Protection ratios (10)	7	10	8	*	9
III. Coverage (relative to mono):					
(1) Stereo to mono receiver (5)	*	*	*	*	*
(2) Stereo to stereo receiver (5)	*	*	*	*	*
IV. Transmitter stereo performance:					
(1) Distortion (10)	8	8	6	8	4
(2) Frequency response (10)	8	5	5	6	8
(3) Separation (10)	7	10	2	6	3
(4) Noise (10)	6	10	8	6	*
V. Receiver stereo performance: Degradation in stereo performance over that measured at the transmitter, including consideration of directional antenna and propagation degradation (10).	*	*	*	*	*

12. The definitions of terms for the evaluation table given above are the same as those of the earlier table. The weightings assigned to the various categories are also the same. Given these basic premises, two further steps are necessary to the process of converting the raw engineering data to scores on the indicated scales of 0–5, 0–10, and 0–15: (a) define the meaning of the extreme values of the scale, and (b) describe an objective process for converting engineering data to scores, based on the meaning of the extreme scores. Judgments as to how systems are to be compared are then primarily done in step (a), and questions as to adequacy and accuracy of engineering data may arise under step (b). For consistency of results, it is important to be able to determine and define maximal and minimal necessary performance levels of a system in the category under consideration. Otherwise, about the only alternative is to rate the systems relative to each other. This should be avoided wherever possible because any change in the performance of either the best or the worst system is likely to result in a change in the ratings given to intermediate systems. Further, the resultant change in the difference between the best and worst systems may be viewed as more or less appropriate depending on how it relates to perceived real-world conditions. To give an extreme example, consider the case of five systems being evaluated in terms of distortion, an evaluation category worth 10 points. However, the difference between the best and the worst system is only 0.5%. Under most circumstances, it would be absurd to give the best system 10 points and the worst system only one point, which would be the case if the systems were evaluated in relation to each other. As will be indicated subsequently, in the absence of clear guidelines, we found it necessary to resort to relative system evaluation in several categories. If future comments we receive indicate some kind of consensus of opinion on ranges over which system performance should be evaluated in the indicated categories, absolute evaluation of system performance will be possible.

13. Fortunately, in our judgment, all five AM stereo systems are at least minimally acceptable under all of the rating criteria. Therefore, the full rating scale (0–10, for example) can be used to describe the range from "just barely acceptable" (zero score) to a performance level so high that further improvements would be essentially undetectable or meaningless under real-world operating conditions of AM broadcasting (score of 10). This interpretation of the rating is particularly valid where realistic extreme values of system performance are known and applied, although it may, depending on the circumstances, be valid when a relative system evaluation or comparison is performed. Where the latter is performed, the simplest procedure would be to use the scoring

scale simply to describe the performance of the worst (zero score to the best (maximum score) of the systems available for evaluation. In either event, after the scoring scale is defined, the engineering data is used to place the systems on the scoring scale in a linear or logarithmic (decibels) fashion, as appropriate to the characteristic being evaluated. Because of uncertainties associated with some of the submitted information, and because of the slight error which may result from rounding-out in the data averaging process, we concluded that the use of an exact linear relationship in relating the engineering data to a score would be without purpose, so for realism as well as convenience, we decided to use the "segmented" or "bracketed" approach described below.

14. Monophonic Compatibility: As an example, we take the category of monophonic compatibility to show how this approach is applied. All five systems "pass" in the sense that a standard monophonic receiver will produce an acceptable audio signal from a stereophonic broadcast signal. The quality judgment is based on the degree of audio distortion attributable to the fact that the receiver is being presented with a stereo rather than a monophonic radio frequency signal. In this case the choice of value for a score of ten is obvious: zero percent distortion. The judgment which we made was to choose five percent distortion as the limit of acceptability; any system exhibiting more than five percent audio distortion when a stereo signal is received on a monophonic receiver would have been given a score of zero. Then it was a straightforward matter to distribute distortion figures among the fifteen available points: systems with distortion of 0–1% received 15 points, from 1–2% received 12 points, and so on. (In case a system's performance fell exactly on a division point, the higher score would have been awarded.) If there were multiple sources of distortion data in the docket record, all the available and applicable data were averaged to obtain the distortion figure used for establishing the score. Note that in the case of monophonic compatibility the "granularity" of scoring was three points; there is an uncertainty of ±1.5 points associated with each tabulated score, independent of any uncertainty associated with the raw data themselves.

15. Mistuning Effects: In the case of our initial evaluation table we were unable to detect strong differences among the five systems on the basis of the expected effects of slight mistuning of receivers. Further review of the comments makes us feel even more certain that differences between the systems in regard to this evaluation category are insignificant. Therefore, pending public comment which convinces us otherwise, we proposed to award five points to all five of the proposed systems, effectively eliminating mistuning effects as a decision criterion.

16. Occupied Bandwidth: Occupied bandwidth is the only one of the selection criteria for which the Commission's Rules contain quantitative requirements which are directly applicable to stereophonic broadcasting.[5] Thus we have available in this case a reasonably clear pass/fail test. The Rules state that signal components more than 15 kHz removed from the carrier frequency must be more than 25 decibels lower in power level than that of the unmodulated carrier. "Occupied bandwidth" data in the docket record were derived from the NAMSRC 4-tone test described in footnote 4, above. This test is not a direct measure of occupied bandwidth as defined in the Rules, but it does give an indication of bandwidth performance. According to data in the docket, the 4-tone test shows that the highest out-of-band components of the "worst" and the "best" systems were around 50 and 70 decibels, respectively, below the carrier level. Although the 4-tone test neither represents all possible types of program material nor corresponds to a direct test of the Commissions's occupied bandwidth requirement, the test does seem to indicate better-than-acceptable performance on the part of all five systems. Although we realize that occupied bandwidth characteristics that meet the Commission's minimum requirements may be significantly different in terms of interference potential, we have concluded that it is unfair and unnecessary to penalize one system with respect to another when both systems significantly exceed stated occupied bandwidth requirements. From the viewpoint expressed in paragraph 12, above, we would say that all five systems fall at the high end of the scale where further improvements are not meaningful in the real-world operating conditions of AM broadcasting. We are therefore awarding the full 10 points to each of the five systems in this category; however, we specifically request comment as to whether the result of "−50 dB" from the 4-tone test used here does in fact represent "virtually perfect" performance and therefore deserves a score of 10.

17. Protection Ratios: For purposes of obtaining an integrated single indicator of audio protection ratios characteristic of the proposed systems, the previously mentioned NAMSRC 4-tone test was used (including the modulation condition where the right channel is modulated with a 400 and a 9500 Hz tone, and the left channel with a 2500 and a 5500 Hz tone) to determine the audio protection ratios afforded under cochannel and first, second, and third adjacent channel conditions. These were averaged to give a composite number, in decibels. The systems were then rated relative to one another, with the best system getting 10 points and the worst system 1 point. The following audio protection ratio table was used to score the intermediate systems and we would welcome comment on its appropriateness.

Audio protection ratio (db)	Points
35.5 to 36.7	10
34.3 to 35.5	9
33.1 to 34.3	8
31.9 to 33.1	7
30.7 to 31.9	6
29.5 to 30.7	5
28.3 to 29.5	4
27.1 to 28.3	3
25.9 to 27.1	2
24.7 to 25.9	1

18. Coverage: In the category of coverage, the data necessary for the quantification approach was not supplied by all of the system proponents. Thus, our present opinions on system performance are primarily based on calculated results and listening tests. The Harris, Inc., calculations should be singled out as being particularly well presented.[6] However, it would be very desirable to have such calculations borne out through on-the-air testing. We intend, in a later paragraph, to solicit additional information in this category from each of the system proponents.

19. Transmitter Stereo Performance: Quantification of transmitter stereo performance data proved to be fairly straightforward. Distortion data were applied to the table in the manner discussed previously, using a scoring scale of 0–10 against a distortion scale of 0–5 percent. In the area of frequency response, 5 out of the 10 available points were derived from the average (of absolute value dB deviations of) frequency response as follows:

[5] See Section 73.40(a)(12), (13) and (14) of the Commissions's Rules.

[6] See the Harris comments, Volume 2, Appendix 4, Page IV–8.

Average response (dB)	Points
.5 to 0	5
1.0 to .5	4
1.5 to 1.0	3
2.0 to 1.5	2
2.5 to 2.0	1

The average frequency response was taken over the range of 50–10,000 Hz. The second 5 points were derived from the worst case deviation (from 0 dB @ 1,000 Hz) over the same range. The following scale was used:

Worst case response (dB)	Points
3 to 0	5
6 to 3	4
9 to 6	3
12 to 9	2
15 to 12	1

20. With respect to separation, it was concluded that below 16 dB should be considered unacceptable and above 25 dB unnecessary (at least for reasonably strong and steady signal conditions). Thus, the table simply represents a 1 point per dB relationship:

Separation	Points
25 or better	10
24 to 25	9
23 to 24	8
22 to 23	7
21 to 22	6
20 to 21	5
19 to 20	4
18 to 19	3
17 to 18	2
16 to 17	1
Below 16	0

Separation was measured over the range of 50–5000 Hz.

21. Points were applied to the sub-category of stereo noise by apportioning 5 dB intervals between the best and worst systems. Again, the systems were related relative to one another, and, recognizing that the lower limit of 33 dB may be considered unacceptable, we welcome comment on the appropriateness of the following table which was used to score the intermediate systems:

Stereo noise [1]	Points
53 to 58	10
48 to 53	8
43 to 48	6
38 to 43	4
33 to 38	2

[1] Decibels below carrier level.

22. Receiver Stereo Performance: In most cases, we feel the data in the docket record were inadequate to provide for complete quantitative scoring in this category. However, we attempted to use the following procedure to derive a quantitative indication of performance: The average stereophonic frequency response, separation, distortion and noise was determined for each proponent's receiver(s) as measured in the laboratory with the proponent's stereo exciter feeding an "ideal modulator". This was used as a gauge of the best performance possible from the receiver. Then over-the-air receiver performance data was compiled and the difference between this data and the transmitter stereophonic performance data was noted. Listening tests were conducted on the tape recordings submitted by the proponents and various radio stations in order to confirm the results. This measure of propagation degradation accounted for 5 of the 10 available points. The remaining 5 points were assigned on the basis of how the respective systems performed under adverse conditions such as deep fading, reception in or adjacent to null areas of directional arrays and co-channel and adjacent channel interference.

23. This concludes our discussion of our AM stereo system evaluation table. We are, through this *Further Notice*, allowing all AM stereo system proponents an additional opportunity to present evidence (preferably of an empirical nature) in any system evaluation category where they feel their systems may have been misrated. Sources of engineering data and additional information pertaining to the completion of the AM stereo system evaluation table are provided in Appendix A. Further, we solicit comments on the appropriateness of the evaluation categories, on the weights assigned to them, on whether or not any categories should be added or deleted from the evaluation table, and on our assignments of ranges of engineering data scales corresponding to numerical scoring scales. We would welcome suggestions as to how areas in which quantitative data are not available, such as listening tests on propagation degradation, may be evaluated more objectively. It is our desire that the methods we use to select the nation's AM stereo transmission system be agreeable to a majority of system proponents if possible, and to broadcasters and the listening public in general. Such a consensus of opinion would greatly expedite the resolution of this proceeding.

24. To further assist us in this undertaking, we have developed a list of questions which we wish to pose to the particular AM stereo system proponents and to the radio stations which tested their respective systems. Others who feel qualified to comment on these areas of interest should feel free to do so.

25. Recognizing that to varying degrees some information has already been provided, the Commission wishes to solicit from all AM stereo system proponents additional information as to reduction in coverage relative to present monophonic transmission. This information may be submitted as a result of calculations (which, as we have mentioned, has been done to a certain extent already); but even more desirable would be additional results of an empirical nature from on-the-air testing. The results of such tests should be specified in terms of signal-to-noise degradation relative to mono or in loss of service radius or area for the following modes of operation:

Transmission mode	Reception mode
Mono	Mono (Reference Case).
Stereo	Mono.
Stereo	Stereo.

The information we receive will be used to more accurately rate the systems in evaluation table category III.

26. We also wish to solicit, from all system proponents, additional information on signal degradation (increased distortion, loss of separation and any special effects peculiar to the particular system) in deep nulls and areas immediately adjacent thereto on the sides of lobes of directional antenna systems. To date, Magnavox has presented the clearest data in this regard. However, their results indicate substantial degradation. Yet even monophonic signals can become badly distorted and we see nothing in any of the proposed stereo systems which would tend to exempt them from such natural deterioration. Nevertheless, we would like to know, if at all possible, how the systems compare to one another in terms of the rate of degradation as a deep null is approached. It would be preferable that the same radio station be used in conducting such a test. Additionally, in most cases we feel we do not have good examples of stereo system performance during deep fades in skywave propagation. Such fades should involve at least momentary loss of the desired signal. The information received in

response to the concerns expressed in this paragraph will be used to better rate the various systems in evaluation table Category V (Receiver stereo performance).

27. Magnavox, in its comments relating to monophonic compatibility, took the approach of measuring the distortion in 19 miscellaneous monophonic receivers for the cases of L only and R only modulation to yield and average receiver distortion of 3.1%.[7] This distortion, however, was only taken for a 400 Hz modulating tone.[8] In order to derive a monophonic compatibility rating for Magnavox comparable to those for the other systems, we would like to obtain distortion data (measured at a transmitter on a monphonic modulation monitor) for 45% AM L-only or R-only conditions, over the frequency range 50–5000 Hz. We would like these distortion measurements to be taken at the discrete frequencies of 50, 100, 200, 500, 1000, 2000, 3000, 4000 and 5000 Hz.

28. Belar, like Magnzvox, approached the subject of monophonic compatibility by measuring the distortion in a monophonic receiver under left channel-only transmission conditions (Belar Comments of May 29, 1979, Page 46) only over an extended range of modulating frequencies. We would like additional information submitted pursuant to the instructions given to Magnavox in the preceding paragraph. We also wish to direct Belar's attention to the adjacent channel protection ratio data presented in its comments on pages 13 and 15. This data indicates that less adjacent channel protection is afforded by the modified or "new" Belar system than the original or "old" Belar system, according to the data presented on Page 19 of Section I of the NAMSRC Report. This result seems inconsistent with the reduction in occupied bandwidth which has been achieved and we would appreicate an explanation. In the absence of such an explanation, we would be obliged to give the Belar system a score of only 1 in this category.

29. With respect to the Kahn/Hazeltine AM stereo system, we have reservations about making transmitter separation measurements with a spectrum analyzer. As pointed by Station KING in its report on the Kanh/Hazeltine system, it is incorrect to consider this system independent sideband in nature since certain harmonic predistortion components resulting from the modulation of one sideband appear in the other. More significantly, the Kahn-provided decoder (which, according to the particular need, seems to serve the function of a stereo modulation monitor or a receiver decoder) failed to approach the separation measured on the spectrum analyzer. Since members of the listening public (should this AM stereo system be adopted) would have to use some type of real-world decoder in their stereo receivers, it was felt that this system should be evaluated largely on the basis of transmitter performance as measured on the Kahn-provided stereo decoder (acting as a modulation monitor). Measured in this manner, transmitter separation was still satisfactory (18.4 dB average); however, the stereo noise, at least as measured by Station WFIL, was only –33 dB.[8] We would like to know whether or not this amount of noise is typical of the Kahn decoder, and if not, what a more realistic figure would be. On the basis of the present record, we would be obliged to give the Kahn/Hazeltine system a score of only 1 in this category. Additionaly, we would like to be provided with a mathematical formula which accurately expresses the stereophonic waveform of the Kahn/Hazeltine system.

30. Lastly, we would ask Harris and Fisher to comment individually or jointly on the feasibility of applying the transmission and reception technology described in the Fisher comments to the Harris V–CPM system. If such an implementation is practical and if, as Fisher contends, the potential channel separation is so great as to enable simultaneous transmission of separate programming on each channel, we believe that such a potential should be further explored if it does not significantly delay the resolution of this proceeding.

31. To the extent the additional information requested in this *Notice* requires further on-the-air testing by system proponents, the Commission will favorably consider granting special test authority to radio stations willing to make their facilities available for such a purpose.

32. We must clarify here our proposed action in cases where we fail to receive adequate quantitative information in reponse to our need for such information, as noted in preceding paragraphs. We are confident that if we received no further information at all, and where thereby forced to use only the information on hand, we are in a position to choose an AM stereo system which would serve AM broadcasters and the American public very well. We present this further opportunity to supply quantitative data and analysis only to make our best possible effort to choose the best of a set of acceptable AM stereo systems, and in fairness to offer to all system proponents every opportunity to resolve our questions about the performance of their systems. We feel, however, that the public interest would be served by proceeding with whatever information we have available at the close of comment and reply comment periods associated with this *Further Notice.*

33. After any appropriate modifications are made in the AM stereo system evaluation table, and after all of the numerical ratings are awarded, the choice of the best system could be made by summing the ratings for each system and then comparing the total scores. However, we do not intend to confine the evaluation process to the mechanical summing of figures. The evaluation table is simply being used to bring order to a large number of individual engineering judgments. Upon its completion, the experience of the Commission and its technical staff will be brought to bear to re-examine the apparent result represented by the final scores. It is important to consider the degree to which the technical staff is confident of the results. Otherwise, the collection of numerical scores could rightly be viewed as somewhat barren and incomplete, particularly if some of the scores turn out to be nearly identical. Some of the relevant factors which may be used to support the results of the numerical evaluation process or to choose between systems having identical or nearly identical scores are:

(1) The degree to which there is a consensus that the evaluation criteria and weightings are appropriate, and that the results are not overly sensitive to relatively minor details of the selection process;

(2) Whether the technical staff's recommendation of the winning system represents a consensus, including but not limited to the results of the numerical scoring;

(3) Staff estimates of the uncertainty associated with individual ratings in the evaluation table, and whether the choice of system might change if "better" data were available;

(4) The relative complexity of the various systems, to the degree that complexity may be related to cost, reliability or receiver performance; and,

(5) The potential for improvement in cost, reliability and performance as new technology makes hardware improvements practical.

[7] See the Magnavox Comments of May 15, 1979, Page C.1–7, where the mean L-only distortion is stated to be 2.9% and the mean R-only distortion is stated to be 3.18%. Thus, the average single channel only distortion is 3.1%.

[8] *Ibid,* Page C.1.6.

[8] *Ibid.,* Page C.1–6.

This listing is not intended to be all-inclusive; but it is representative of the types of factors which could be considered by the Commission in the system selection process.

34. This *Further Notice* has thus far been directed to the matter of acquisition of additional information to assist the Commission in the selection of a single AM stereo broadcasting system based on a ranking of technical performance characteristics. The Commission recognizes, however, that there are imperfections in such a method of selection. These imperfections stem from the difficulty in designing any completely objective selection method. For example, the determination of both the weighting factor applied to each performance characteristic and the range of the characteristic over which the systems are to be graded involve subjective judgment. The Commission cannot be certain that its judgment in making these decisions properly reflects the balance that would be struck by consumers if they were free to choose. The lack of any relative price information associated with these technical decisions increases this uncertainty.

35. In addition to this fundamental difficulty with the selection method, there is the possibility of a tie, or near tie, among the best two or three systems. As an alternative, therefore, the Commission has considered the merit of authorizing more than one system, or even all five, with the ultimate selection of the surviving system or systems being left to the market. We have been reluctant to adopt this alternative because of our concern that incompatibilities among the systems may have an adverse effect on public reception of AM stereo. We believe that any member of the public who purchases an AM stereo receiver should be able to receive the signals of any of the authorized stereo systems.

36. The requirement that signals from all systems be receivable could, of course, be satisfied by multi-system receivers if such receivers could be obtained at reasonable cost. We believe that the added cost should be small compared with the cost of a single system receiver. It would also be desirable for the receiver to switch automatically to the correct reception mode when the listener tunes in an AM stereo signal. We are requesting comments, therefore, on the following questions:

(1) Is it technically feasible to produce multi-system receivers? Could automatic mode switching be incorporated? Are there reliability or operational problems that can be envisioned with the use of multi-systems?

(2) What would be the cost of developing such a multi-system receiver with and without automatic mode switching? After development, what would be the added cost at wholesale of producing a multi-system receiver, compared to the cost of single-system AM stereo receiver of comparable quality? What would be the added cost at retail of multi-system receivers compared to the cost of single-system AM stereo receivers? How would the added cost of production depend on the number of units produced? To what extend would the added cost of developing and producing multi-system receivers depend on whether the receiver was designed to receive five systems, or fewer than five systems? How would these costs be affected by which systems the receiver was designed to receive? Please supply any available evidence to support your answers.

37. Another approach that the Commission could consider would be the selection of a system by lottery. This could involve selection from among all five systems on the basis that all systems are minimally qualified. On the other hand, the lottery might be used to select from among the best two or three after prior screening based on technical characteristics. We invite comments on these alternatives.[9]

38. All interested parties are invited to file written comments on or before December 9, 1980, and reply comments on or before January 8, 1981. All relevant and timely comments and reply comments will be considered by the Commission. The Commission may take into account any other relevant information before it in addition to the comments invited by this *Notice*.

39. In accordance with the provisions of Section 1.419 of the Commission's Rules, an original and 5 copies of all comments, replies, pleadings, briefs, or other documents filed in this proceeding shall be furnished the Commission. Members of the public wishing to participate informally in this proceeding may submit a single copy of their comments, specifying the above-captioned docket number in the heading. Copies of all responses will be available for public inspection during regular business hours in the Commission's Public Reference Room (Room 239) at its headquarters in Washington, D.C. (1919 M Street, N.W.).

40. For further information concerning this proceeding contact James McNally, (202) 632-9660. However, interested parties and members of the public should be aware that when the Commission issued the *Notice of Proposed Rule Making* in this proceeding, it stated that *ex parte* contacts were prohibited. See *Notice of Proposed Rule Making*, Paragraph 32, published in the Federal Register on October 19, 1978 (43 FR 48659). An *ex parte* contact is a message (written or spoken) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentations requested by the Commission. As we explained when we recently issued our *Memorandum Opinion and Order and Notice of Proposed Rule Making* in the FM quadraphonic proceeding (FCC Docket 21310), we believe that the approach we took in this proceeding prohibiting all *ex parte* contacts may not have been compelled under *Sangamon* [10] as a legal matter. However, we do not believe it is desirable or necessary to change the restricted status of this proceeding at this stage.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—Source and Derivation of Engineering Data Used in Rating the Five Proposed AM Stereo Systems in the 11 Identified Evaluation Categories

Monophonic Compatibility

As stated in the *Further Notice of Proposed Rule Making* in this proceeding, monophonic compatibility is defined as the measure of the average harmonic distortion over the range of 50–5000 Hz under the condition of left or right channel only stereophonic transmission, taken from the audio output of an envelope detector type of monophonic modulation monitor. Where available, distortion measurements were tabulated for the following discrete frequencies: 50, 100, 200, 500, 1000, 2000, 3000, 4000 and 5000 Hz and averaged. Data provided at 400 Hz rather than 500 Hz, or 2500 Hz rather than 3000 Hz was used as an acceptable alternative in the averaging process. Where there was a simple omission of data, such as at the frequencies 3000 and 4000 Hz, the data at 2000 Hz and 5000 Hz was averaged to yield an estimate of intermediate frequency response. If data was not provided for either 50 or 5000 Hz, no

[9] If, however, the technical staff reaches a consensus that the top-ranked system is indeed the best choice, this recommendation will be considered by the Commission prior to any decision to use a lottery. This engineering judgment could be made on the basis of other factors which, in the experience of staff members, were deemed significant.

[10] *Sangamon Valley Television Corp. v. United States*, 269 F. 2d 221 (D.C. Cir. 1959).

estimate was made for the missing point and only the remaining submitted data was used in the averaging process. Generally, (as indicated by the references given below) data provided by several radio stations was averaged to give a comprehensive average of actual system performance. This average was then converted to an evaluation table score using the procedure set forth in Paragraph 14 in the *Further Notice.* Data sources utilized in the system evaluation process are indicated below for each AM stereo system.

Harris—(1) Harris Comments of May 15, 1979, Volume 2, Page VI–B–5, Table 1–2, concerning Station WTAD "envelope distortion" tests using the MW–1A transmitter.

(2) *Ibid.*, Page VI–C–5, Table II–2, Station WGN "mono mod. monitor distortion."

(3) *Ibid.*, Page VI–D–3, Table III–1, Station WTAD "mono mod. monitor distortion."

Magnavox—Data was not submitted in the above-mentioned format. However, in the Magnavox Comments of May 15, 1979, on Page C.1–7 it is stated that "Where the (receiver) distortion is measured for a left transmission, the mean is found to be 2.97% . . .". And "For the right channel transmission, the mean measured monaural distortion was 3.18% . . .". See also Paragraph 27 of the *Further Notice.*

Belar—Data was not submitted in the above-mentioned format. However, in the Belar Comments of May 29, 1979, Page 46, a plot is given of a Panasonic RF–1090 monophonic receiver distortion under 95% left channel only modulation. The average distortion would appear to be in the vicinity of 8.5%. See also Paragraph 28 of the *Further Notice.*

Kahn—Station WABC Comments of January 2, 1980, presenting the results of an engineering test of August 15, 1979, revised as of December 12, 1979, Appendix 1, Pages 57, 58, 59 and 60.

Motorola—(1) Undated Motorola Comments received May 15, 1979, Exhibit VII (New Over The Air Tests), Figure 7, Page VII–21, concerning WGN tests.

(2) *Ibid.*, Figure 8, Page VII–22.

(3) *Ibid.*, Figure 11, Page VII–69 for WTAQ.

(4) *Ibid.*, Figure 12, Page VII–70.

(5) *Ibid.*, Figure 3, Page VII–102 for KAAM.

(6) *Ibid.*, Figure 4, Page VII–103.

Note.—In the above referenced multiple plot graphs, Plot 7 (L+R distortion) was used as the basis of measurement. No specific data was tabulated on the subject of mistuning effects. The decision to award the maximum possible score of give to each system was based simply on a general reading of the comments and the resultant conviction that there was no significant difference between the various systems.

Interference Characteristics

Occupied bandwidth data was derived from examination of spectrum analyzer photographs provided by system proponents. (See also Paragraph 10 of the *Further Notice.*)

Harris—Harris Comments of May 15, 1979, Volume 2, Appendix VI, Section E, "Occupied Bandwidth," Pages VI–E–1 through 5. Only data for V–CPM was considered.

Magnavox—National AM Stereophonic Radio Committee (NAMSRC) Report of December, 1971, Pages H–93, H–96, H–99 and H–102.

Belar—Belar Comments of May 29, 1979, Page 9.

Kahn—Kahn Communications, Inc. Comments of May 14, 1979, Figure 17c (lower half of page), Figure 17d (upper half of page) and Figure 17f (excepting the photograph of the unmodulated carrier).

Motorola—NAMSRC Report of December, 1977, Pages H–94, H–97, H–100 and H–103.

In evaluating the cochannel and adjacent channel protection ratios for the different systems, we used (except as noted below) data based on NAMSRC Test A.7. Refer to the discussion of audio protection ratio in paragraphs 6 and 17 of the *Further Notice.*

The data averaging process involved reformating the data provided by the system proponents to show an average adjacent channel protection ratio (inasmuch as data on the upper and lower adjacent channels was provided). This data was then arranged in a new table as follows:

	400–9500 R Horizontal data	
L–R L R	2500–5500 L Average	
Cochannel		
1st adjacent		
2d adjacent		
3d adjacent		
Composite (vertical data) average		

As can be seen from the above, the procedure simply involved averaging all of the protection ratio data provided to obtain a single composite indicator of the protection ratios.

Harris—Harris Comments of May 15, 1979, Volume 2, Appendix VI, Section F, "Protection Ratio, Stereo to Mono, Envelope Detector Receiver," Page VI–F–2.

It should be noted that the desired-to-undesired signal strengths used by Harris were not the same as those used by NAMSRC in its Test A.7. However, the signal strength ratios were the same, so the data was considered acceptable.

Magnavox—NAMSRC Report of December, 1977, Page H–122. Only the data pertaining to the effects on the NAMSRC-provided "compatibility receiver" were considered.

Belar—Belar Comments of May 29, 1979, Page 13.

Kahn—Kahn Communications, Inc. Comments of May 14, 1979, table on the page after page 12 for the Panasonic RF–1080 receiver.

Motorola—NAMSRC Report of December, 1977, Page H–125. Only the data pertaining to the effects on the NAMSRC-provided "compatibility receiver" were considered.

Coverage

As indicated in the *Further Notice* (see Paragraph 18), we wish to solicit more complete information on this facet of AM stereo system operation. We propose to rate the systems on a relative basis, based on the dB reduction in signal-to-noise ratio, or on the loss of service area relative to monophonic operation. The two modes under consideration are stereo transmitter to mono receiver and stereo transmitter to stereo receiver. Since the differences in system performance in these areas may be rather small, relative weighting may result in exaggerated evaluation table scores between the best and the worst systems. Accordingly, we will carefully consider alternative suggestions as to how AM stereo systems should be evaluated in this category.

Transmitter Stereo Performance

In general, information on transmitter stereo performance in the areas of frequency response, separation and distortion is presented in the form of multi-purpose of composite tables or graphs. The data given in a particular table or graph on a particular page will be designated by "FR" (frequency response), "S" (separation) or "D" (distortion). In averaging frequency response, the absolute value of the deviation from 0 dB @ 1000 Hz was used. Otherwise, it would be possible for a system with extreme but balanced deviations to average out to zero, which would be an unrealistic result. The methods of applying the average values of these three parameters is discussed in paragraphs 19 (frequency response), 20 (separation) and 14 (distortion was per the procedure used in monophonic compatibility) of the *Further Notice.*

Harris—(1) Harris Comments of May 15, 1979, Volume 2, Page VI–B–4 Table 1–1, for left and right channels, FR and S. Data in "overall response" column were utilized, as we believe the data under

"transmitter response" pertain to readings taken on a monophonic station modulation monitor.

(2) *Ibid.*, Page VI–B–5, Left right channel stereo D.

(3) *Ibid.*, Page VI–C–4, left and right channel FR and S, Station WGN.

(4) *Ibid.*, Page VI–C–5, left and right channel stereo D, Station WGN.

(5) *Ibid.*, Page VI–D–3, left and right channel stereo D and S, Station WTAD.

Magnavox—(1) NAMSRC Report of December, 1977, Page I–41 (top graph) for left channel FR, S and D.

(2) *Ibid.*, Page I–42 (top graph) for right channel FR, S and D.

(3) *Ibid.*, Page I–58 (top graph) for left channel FR, S and D.

(4) *Ibid.*, PageI–59 (top graph) for right channel FR, S and D.

(5) Magnovox Comments of May 15, 1979, Section M (Over the air tests), Figure M6 for left channel FR, S and D and Figure M7 for the right channel FR, S and D.

Note.—The graphs from the NAMSRC Report referenced above are labeled "Fidelity Bandwidth" as though the measurements were taken on the magnovox receiver. However, the general excellence of the results (but particularly the frequency response) seems beyond the capability of the bandwidth-limited Magnovox receiver. Further, a reading of NAMSRC Test B.1 (Over the air tests) indicates that except for noted differences, the procedures followed were the same as for Test A.1 (Monitor performance), where the stereo monitor was utilized at the transmitter site. Lastly, it is indicated on Page H–129 of the NAMSRC Report that the proponents' receivers were located about 5 miles from the transmitter site. For these reasons we believe the data reflects stereo monitor performance, not receiver performance and that the graphs are labeled incorrectly.

Belar—(1) Belar Comments of May 29, 1979, Page 57, Figure 2 for left channel FR, S and D.

(2) *Ibid.*, Page 58 for right channel FR, S and D.

(3) *Ibid.*, Page 59 for left channel FR, S and D.

(4) *Ibid.*, Page 60 for right channel FR, S and D.

(5) *Ibid.*, Page 61 for left channel FR, S and D.

(6) *Ibid.*, Page 62 for right channel FR, S and D.

Note.—In view of the fact that on Page 53, Belar claims that the modulation monitor originally supplied to WJR performed poorly due to mistuning, leading us to conclude that the data from sources 1 through 4 above might not be as good as "typical" measurements might be, we decided to average laboratory data using an "ideal modulator" (sources 5 and 6) with the other as a compensatory measure. This had the effect of changing the data averages from 1.7/20.1/2.2 (frequency response/separation/distortion) to 1.3/21.5/1.8. Since our use of the laboratory data may be considered objectionable, we would like to have additional field data to bear out the validity of our conclusions.

Kahn—(1) WFIL Comments of July 31, 1979, Page 15, Table 2 for left and right channel FR and D.

(2) *Ibid.*, Table 4, Page 19 for left and right channel S.

(3) KING Engineering Report of April–July, 1979, Page 53, Table 7a (Tests 3 and 4) for left and right channel FR and S.

(4) *Ibid.*, Page 54, Table 7b for left and right channel D.

Motorola—(1) Motorola Comments (undated in response to the Notice of Proposed Rule Making, Exhibit VII, Page VII–15 for WGN, left and right channel FR, S and D.

(2) *Ibid.*, Page VII–16, left and right channel FR, S and D.

(3) *Ibid.*, Page VII–21, left and right channel FR, S and D.

(4) *Ibid.*, Page VII–22, left and right channel FR, S and D.

Note.—Above measurements were apparently made with no pilot tone.

(5) *Ibid.*, Page VII–64 for WTAQ, left and right channel FR, S and D.

(6) *Ibid.*, Page VII–65, left and right channel FR, S and D.

(7) *Ibid.*, Page VII–69, left and right channel FR, S and D.

(8) *Ibid.*, Page VII–70, left and right channel FR, S and D.

(9) *Ibid.*, Page VII–102 for KAAM, left and right channel FR, S and D.

(10) *Ibid.*, Page VII–103, left and right channel FR, S and D.

(11) NAMSRC Report of December, 1977, Page I–41 (middle graph) for left channel FR, S and D. (Station WGMS)

(12) *Ibid.*, Page I–42 (middle graph) for right channel FR, S and D.

(13) *Ibid.*, Page I–58 (middle graph) for left channel FR, S and D. (Station WTOP)

(14) *Ibid.*, Page I–59 (middle graph) for right channel FR, S and D.

Noise:

Harris—(1) Harris Comments of May 15, 1979, Volume 2, Page VI–B–6 for MW–1A transmitter.

(2) *Ibid.*, Page VI–C–7 for Station WGN.

(3) *Ibid.*, Page VI–D–13 for Station WTAD.

Magnavox—NAMSRC Report of December, 1977 Page 33.

Belar—Belar Comments of May 29, 1979, Page 53 (L–R detector operating).

Kahn—WFIL Comments of July 31, 1979, Page 7.

Motorola—NAMSRC Report of December, 1977, Page 33.

Receiver Stereo Performance

Our proposed approach in evaluating receiver stereo performance is described in Paragraph 22 of the *Further Notice*. Average stereo receiver frequency response, separation, distortion and noise would be determined and compared with same system transmitter performance. Loss of performance in each category would be noted and the systems would be compared on a relative basis. This aspect of receiver evaluation would comprise five of the ten available points. The five remaining points will be assigned on the basis of combined transmission, propagation and reception performance, based on engineering judgment. System performance under adverse conditions of cochannel or adjacent channel interference, distortion or loss of separation in or adjacent to nulls of directional arrays and under deep fading conditions will be of primary interest. The degree to which receiver design can compensate for unavoidable or potential system weakenesses (such as momentary loss of the stereophonic channel) will also be considered. We would like to see system proponents utilize receivers of comparable bandwidth and selectivity in developing additional data in this category.

Appendix B—Pleadings Involving Special Relief in the Matter of AM Stereophonic Broadcasting

(1) A "Motion to Permit Public Inspection of and Comment on a Matrix Analysis Study Made by an Office of Science and Technology/Broadcast Bureau Committee" filed by the Hazeltine Corporation. (Dated April 11, 1980, received April 14, 1980)

(2) A "Motion to Grant an Oral Hearing" filed by Kahn Communications, Inc. (Dated April 18, 1980, received April 21, 1980)

(3) Comments of Motorola, Inc. in support of Hazeltine's request in (1) above. (Dated and received on April 21, 1980)

(4) A request from the Consumer Electronics Group of the Electronics Industries Association for a 9 month delay period between the adoption of rules for AM stereophonic broadcasting and commencement of such broadcasting. (Dated and received on April 22, 1980)

(5) On April 29, 1980, letter from Crowell & Moring, counsel for Hazeltine Corporation, giving the results of a Dippell-Reed survey of 23 AM stations which had tested AM stereo transmission systems and again urging that the Commission release its AM stereo evaluation matrix, provide for a

period of expedited comments and allow for oral presentation by knowledgeable persons.

(6) A "Petition for Oral Presentation" filed by Motorola, Inc. (Dated and received on May 5, 1980)

(7) A statement of the American Broadcasting Company, Inc., concerning the need for prompt public inspection of the AM stereo "matrix analysis". (Dated and received on May 6, 1980)

(8) A May 16, 1980, letter from Patton, Boggs & Blow, counsel for the Magnavox Consumer Electronics Co. (Magnavox) urging the Commission not to grant the relief requested by Kahn Communications, Inc. in (2) above.

(9) A "Petition for Emergency Relief" filed by Kahn Communications, Inc. (Dated May 21, 1980, received May 23, 1980)

(10) An "Opposition to Petition for Oral Presentation" filed by Magnavox, through its counsel, directed at the Motorola pleading in (6) above. (Undated, received May 27, 1980)

(11) An "Opposition to Petition for Emergency Relief" filed by Magnavox, through its counsel, directed at the Kahn pleading in (9) above.

(12) "Reply of Motorola, Inc. to Opposition to Petition for Oral Presentation" directed at the Magnavox pleading in (10) above. (Dated and received on June 6, 1980)

(13) A June 9, 1980, letter from Crowell and Moring, counsel for Hazeltine Corporation, listing various *ex parte* contacts and asking for oral presentation.

(14) A June 19, 1980, letter from Patton, Boggs & Blow, counsel for Magnavox, requesting denial of the pleadings filed by Kahn Communications, Inc. and Hazeltine Corporation for special relief.

(15) A June 30, 1980, letter from Patton, Boggs & Blow, counsel for Magnavox, urging the Commission's prompt adoption of a Report and Order in this proceeding.

(16) A "Statement of Interest" filed by the Stations' Committee for AM Stereo endorsing the "marketplace concept" as the means of resolving this proceeding. (Dated July 14, 1980, received July 22, 1980).

[FR Doc. 80-27729 Filed 9-8-80; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 80-541; RM-3586; RM-3657]

FM Broadcast Stations in Rushville and Virden, Ill.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: This action proposes to assign Channel 244A to Rushville, Illinois, and to Virden, Illinois, in response to petitions filed by Steve Waters and by Joseph Cerar and Randal J. Miller, respectively. Each city could receive a first local aural service.

DATE: Comments must be filed on or before October 24, 1980, and reply comments on or before November 13, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the Matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Rushville and Virden, Illinois). [BC Docket No. 80-541; RM-3586, RM-3657.]

Adopted: August 22, 1980.

Released: September 4, 1980.

By the Chief, Policy and Rules Division:

1. *Petitioner, Proposal and Comments:* (a) Petitions for rule making were filed by Joseph Cerar and Randal J. Miller proposing the assignment of FM Channel 244A to Virden, Illinois,[1] and by Steve Waters proposing the assignment of Channel 244A to Rushville, Illinois.[2]

(b) Both petitioners state they will apply for the channel, if assigned. Comments in opposition to the Rushville request were received from Beardstown Broadcasting Co., licensee of Stations WRMS(AM) and WRMS-FM, Beardstown, Illinois.

(c) The channel can be assigned to both communities in compliance with the mileage separation requirements provided a total of 8 kilometers (5 miles) of site restrictions are imposed to avoid short spacing to each other.

2. *Demographic Data:*

(a) *Location:* Rushville is located in west central Illinois, approximately 400 kilometers (250 miles) southwest of Chicago, Illinois, and 200 kilometers (125 miles) north of St. Louis, Missouri. Virden is located approximately 96 kilometers (60 miles) southeast of Rushville.

(b) *Population:* Virden—3,744;[3] Macoupin County—44,557; Rushville—3,300; Schuyler County—8,135.

(c) *Local Aural Broadcast Service:* Virden—none; Rushville—none.

3. *Economic Considerations:* Virden and Rushville are both described as primarily agricultural areas. Virden specializes in feed grains—corn, soybeans, wheat. A new coal mine was discovered just south of Virden in the early 1970's. Rushville is the retail, social, medical, and educational center of the area.

4. In its opposition, Beardstown Broadcasting contends that the preclusive impact of the Rushville and Virden proposals should be carefully considered since the area in which the channels can be assigned is 10,920 square kilometers (4,200 square miles) with 72 communities. A judicious selection of communities, we are told, could produce three new assignments of this channel in the open area rather than the two requested. Several of the communities are said to have no local aural service, the largest of which is Louisiana, Missouri (pop. 4,533). Because the Rushville proposal would foreclose three possible assignments by its central location in this area, that assignment is opposed by Beardstown Broadcasting.

5. While three assignments would certainly be more desirable than two, neither Rushville nor Virden have local service. Only at these communities has interest been expressed. By virtue of this proposal, solicitation of other interests may be accomplished. In addition, we request a showing of alternative available channels in the precluded areas. Both petitioners have expressed a willingness to accept transmitter site restrictions in order to resolve the short spacing of 8 kilometers (5 miles.)

6. In view of the fact that the proposed FM channel assignments would provide for first local aural broadcast services, the Commission believes it appropriate to propose amending the FM Table of Assignments, Section 73.202(b) of the Commission's Rules, with respect to the listed cities:

City	Channel No.	
	Present	Proposed
Rushville, Ill		244A
Virden, Ill		244A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

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[1] Public Notice of the petition was given on February 27, 1980, Report No. 1218.

[2] Public Notice of the petition was given on May 20, 1980, Report No. 1229.

[3] Population figures are from the 1970 U.S. Census.

8. Interested parties may file comments on or before October 24, 1980, and reply comments on or before November 13, 1980.

9. For further information concerning this proceeding, contact Mark Lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation requested by the Commission.

Federal Communications commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decisions in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisons of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 80-27725 Filed 9-8-80; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 80-539; RM-3607]

FM Broadcast Station in Walker, Minn.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: Action taken herein proposes the assignment of a Class A FM Channel to Walker, Minnesota, in response to a petition filed by Stagg Broadcasting. The proposed channel could provide a first fulltime local aural broadcast service to Walker.

DATE: Comments must be filed on or before October 24, 1980, and reply comments on or before November 13, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Walker, Minnesota). [BC Docket No. 80-539; RM-3607].

Adopted: August 22, 1980.
Released: September 4, 1980.

By the Chief, Policy and Rules Division.

1. *Petitioner, Proposal, Comments:*

(a) A petition for rule making [1] was filed by Stagg Broadcasting ("petitioner"), proposing the assignment of Channel 257A to Walker, Minnesota, as that community's first FM assignment.

(b) The channel can be assigned to Walker in compliance with the minimum distance separation requirements.

(c) Petitioner states it will apply for the channel, if assigned.

2. *Community Data:*

(a) *Location:* Walker, seat of Cass County, is located approximately 321 kilometers (200 miles) north of Minneapolis-St. Paul.

(b) *Population:* Walker—1,073 [2], Cass County—71,323.

(c) *Local Aural Broadcast Service:* Walker is served locally by daytime only AM Station KLLR, licensed to petitioner.

3. *Economic Consideration:* Petitioner states that Walker and the surrounding area is experiencing a rapid population growth. It asserts that the economy is based on tourism and government. Petitioner has also shown that service will be provided to a small area that is presently unserved and underserved by existing stations or assignments.

4. Since Walker is located within 402 kilometers (250 miles) of the U.S.-Canada border, the proposed assignment of Channel 257A to Walker, Minnesota, requires coordination with the Canadian Government before it can be adopted.

5. In view of the fact that the proposed FM channel could provide a first fulltime local aural broadcast service, the Commission proposes to amend the FM Table of Assignments, Section 73.202(b) of the Rules, with regard to Walker, Minnesota, as follows:

[1] Public Notice of the petition was given on March 20, 1980, Report No. 1220.

[2] Population figures are taken from the 1970 U.S. Census.

City	Channel No.	
	Present	Proposed
Walker, Minn		257A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before October 24, 1980, and reply comments on or before November 13, 1980.

8. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-9660. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 80-27726 Filed 9-8-80; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 45, No. 176
Tuesday, September 9, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Proposed Determinations With Regard to the 1981 Feed Grains and Soybean Programs

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1981 feed grain crops: (a) Whether there should be a set-aside requirement and, if so, the extent of such set-aside; (b) the national progam acreages (NPA's); (c) the recommended percentage reduction from previous year's harvested acreage to qualify for deficiency payments on their entire 1981 planted acreage; (d) if a set-aside is implemented, whether a limitation should be placed on planted acreage; (e) whether there should be a land diversion program, and, if so, the extent of such diversion and the level of the payment; (f) whether barley and oats should be included in the 1981 Feed Grain Program; (g) whether to require compliance with the established farm normal crop acreage (NCA) as a condition of eligibility for program benefits; (h) the methodology to be used to adjust the established "target" prices from the 1980-crop levels, and if NCA and set-aside requirements are deemed necessary, whether the established "target" prices should be adjusted further to compensate producers for complying with the NCA and set-aside requirements; (i) the loan and purchase rates for the 1981-crops of corn, sorghum, barley, oats, and rye. Determinations (a) through (c) are required to be made by the Secretary on or before November 15, 1980, in accordance with applicable provisions in section 105A of the Agricultural Act of 1949, as amended. The Secretary also proposes to determine the support level for the 1981 crop of soybeans. All proposed determinations are to be made in accordance with applicable provisions in sections 105A and 201(e) of the Agricultural Act of 1949, as amended, and section 1001 of the Food and Agriculture Act of 1977, as amended. This notice invites written comments on the proposed determinations.

DATE: Comments must be received on or before October 9, 1980.

ADDRESS: Mail comments to Mr. Jeffress A. Wells, Director, Production Adjustment Division, Room 3630 South Building, P.O. Box 2415. Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Orville I. Overboe or Lois Moe, Agricultural Program Specialists, Production Adjustment Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013, (202) 447–7987. The Draft Impact Analysis describing the options considered in developing this proposed determination and the impact of implementing each option is available from the above-named individuals.

SUPPLEMENTARY INFORMATION: This proposed determination has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "significant".

In compliance with Secretary's Memorandum No. 1955 and the final report issued by the Secretary with respect to Executive Order 12044 and entitled "Improving USDA Regulation" (43 FR 50988), it is determined after review of these and related regulations contained in 7 CFR 707, 709, 713, 718, 719, 792, 794–96, and 1421.72–.76, .111–.115, .235–.239, .270–.274, .350–.354, .390–.392 for need, currency, clarity, and effectiveness, that no additional changes be proposed at this time. Any comments which are offered during the public comment period on any of these regulations, however, will be evaluated in development of the final determination.

The need for this notice is to satisfy the statutory requirements provided in Sections 105A(a), 105A(b)(1)(A), 105A(b)(1)(B), 105A(d)(1), 105A(d)(3), 105A(f)(1), 105A(f)(2) and 201(e), of the Agricultural Act of 1949, as amended (hereinafter referred to as the "1949 Act"). and Sections 1001(a), 1001(b), and 1001(c), of the Food and Agriculture Act of 1977, as amended (hereinafter referred to as the "1977 Act").

The titles and numbers of the federal assistance programs that this notice applies to are: Title-Commodity Loans and Purchases; Number-10.051; and Title-Feed Grain Production Stabilizatio; Number-10.055; as found in the Catalog of Federal Domestic Assistance.

These actions will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A–95, was not used to assure that units of local government are informed of these actions.

Final actions on these proposed determinations by the Secretary for 1981-crop program purposes should be made by not later than October 15, 1980, to allow feed grain producers additional time to plan their 1981 crop plantings within announced program provisions. Therefore, I have determined that it is impractical and contrary to the public interest to comply with the public rulemaking requirements of 5 U.S.C. 553 and Executive Order 12044.

Accordingly, the public comment period is being limited to 30 days which will allow the Secretary sufficient time to properly consider the comments received before the final program determinations are made.

The following proposed program determinations with respect to the 1981 crops of feed grains and soybeans are to be made by the Secretary.

Proposed Determinations

Feed Grains

a. *Whether there should be a set-aside requirement and, if so, the extent of such set-aside.* Section 105A(f)(1) of the 1949 Act provides that the Secretary shall implement a set-aside of cropland if it is determined that the total supply of feed grains will, in the absence of a set-aside, likely be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. An adequate U.S. carryover level for the 1981-82 marketing year has been determined by USDA to be equal to 6.7 percent of the world consumption of coarse grains or an estimated 52 million metric tons (MMT).

The Secretary is required to announce whether a set-aside is to be in effect for

the 1981 crops of corn, sorghum, and if designated, barley and oats by not later than November 15, 1980. If a set-aside is instituted, then as a condition of eligibility for loans, purchases, and payments, producers must set aside and devote to conservation uses an acreage of cropland equal to a specified percentage of the acreage of feed grain program crops planted for harvest in 1981.

Carryover corn stocks at the end of the 1979–80 marketing year (September 30, 1980) are estimated to be near 1,700 million bushels, an increase of approximately 30 percent from a year earlier. Sorghum carryover stocks are estimated at approximately 100 million bushels, down from 159 million bushels a year earlier. Carryover barley and oats stocks at the end of the 1979–80 marketing year (May 31, 1980) were 191 and 239 million bushels, respectively, both down approximately 17 percent from a year earlier.

Average farm prices for the 1979-80 season for corn and sorghum are expected to be about 25 to 30 cents per bushel higher than for 1978–79, barley prices are expected to increase about 40 cents, and oats prices are expected to increase about 15 cents. These prices increases were achieved even though feed grain supplies were at a record 280 MMT, an increase of eight percent over the 1978–79 level. Feed grain carryover stocks are estimated at 53.4 MMT—up 16 percent from a year earlier. However, it is significant that approximately 31 MMT or 59 percent of the 1979–80 feed grain carryover is in the farmer-owned reserve (FOR) or owned by the Commodity Credit Corporation (CCC). For 1978–79, about 20 MMT, or 44 percent of the carryover, was in the FOR or owned by CCC.

Of the 80.0 million acres planted to corn in 1979, 17.2 million acres, or 21 percent, complied with the 1979 Feed Grain Set-Aside Program. Sorghum compliance was 8.5 million acres, or 55 percent of 15.4 million acres planted, while barley compliance was 3.4 million acres, or 42 percent of 8.1 million acres planted. Oats were not included in the 1979 Feed Grain Program. A paid diversion program was also offered for 1979-crop corn and sorghum to producers who participated in the set-aside program. About 70 percent of the corn participants also participated in the paid diversion program while about 38 percent of the sorghum participants participated in the diversion progran. With no set-aside requirements in effect or paid diversion program offered for the 1980 crops, all producers of feed grains, except for oats, will be eligible for deficiency and disaster payments. Also, in 1980-crop feed grain producers will be eligible for the price support and grain-reserve programs.

Feed grain planted acreage for 1980-81 totals about 121 million acres, or an increase of 3.2 million acres over 1979–80. Corn acreage increased around 3.5 million acres, sorghum around 0.4 million acres, barley about 0.2 million acres, while the planted acreage of oats is down about one million acres. Total corn production in million bushels is projected to range from 6,200 to 7,100, sorghum from 600 to 700, barley from 325 to 355, and oats from 420 to 460. Total feed grain production could range from 187 to 207 MMT. However, a 1980–81 corn crop based on most likely weather conditions could result in a corn production around 700 million bushels less than projected demand, reducing carryover stocks by about the same amount. Sorghum, barley and oats carryover stocks are also expected to show a sharp decrease-sorghum, from 101 to 52 million bushels; barley, from 191 to 119 million bushels; and oats, from 239 to 141 million bushels. Feed grain carryover is projected to decrease arond 40 percent, or from 53.4 MMT to 31 MMT. This assessment is, however, subject to change because of the impact that the hot weather and drought could have on the final 1980 feed grain production.

It is estimated that the 1980–81 domestic use of feed grains will total about 148 MMT, a decrease of 7.5 MMT from 1979–80. The 1980–81 feed use may decrease approximately 7 percent, or 10 MMT, primarily because of a reduction in pork and poultry production, continued large supplies of oilseeds, and a tight supply situation for sorghum, barley and oats. Domestic feed use for corn may decrease approximately 175 million bushels while sorghum is expected to decrease by about 150 million bushels for 1980–81. Corn used for the production of gasohol and sweeteners is projected to increase by 110 million bushels. Weather could be an important factor in domestic usage and could result in a feed grain domestic use of 139 to 157 MMT. Corn domestic usage could range from 4,550 to 5,200 million bushels, compared with the 1979–80 projected use of 4,950 million bushels.

Export demand is expected to continue to be strong. Current projections for 1980–81 are corn exports at 2,500 million bushels, an increase of 100 million bushels over 1979–80 projections. Sorghum exports are currently projected at 225 million bushels, a decrease of 115 million bushels. Total feed grain exports are projected at 71.0 MMT, the same as projected for 1979–80. However, due to uncertain 1980-crop world feed grain production prospects, U.S. corn exports could vary from 2,300 to 2,700 million bushels; sorghum, from 200 to 250 million bushels; barley, from 55 to 95 million bushels; and oats, from 5 to 15 million bushels. Total feed grain exports could vary from 65 to 77 MMT. The final export figure is highly dependent on the 1980 crop production, growth in import demand, and export availabilities of other exporters.

The 1980 world coarse grain crops are still very dependent on future weather conditions. For the second consecutive year, world coarse grain utilization is expected to exceed coarse grain production. World coarse grain production for 1980–81 is estimated at 721 MMT, down 1 percent from 1979–80. Utilization is expected to be around 738 MMT, up 5 MMT from 1979–80, and near the record 739 MMT in 1978–79. Import demand is expected to remain strong. As a result, coarse grain stocks are estimated to fall by about 19 percent. World stocks would be the lowest they have been since 1975–76.

Feed grain demand is likely to remain related to overall economic conditions. Improved total grain prospects in the U.S.S.R., Eastern Europe and Brazil are expected to reduce coarse grain import demand in these countries below last year's levels. Total U.S. feed grain exports are projected at 71 MMT—near the record 70.8 MMT for 1979–80. Heavy exports, in addition to U.S. crop prospects significantly below last year's record outturn, are expected to draw U.S. coarse grain stocks to the lowest level in four years.

Aggregate marketing year carryout stocks for other major exporting countries are also expected to decline this year. Canadian coarse grain stocks, already at a low level as a result of the poor 1979/80 crop and heavy exports, will be further stressed by this year's drought-affected outturn. Canadian coarse grain exports are currently projected to be at the lowest level in six years. Southern hemisphere crops are yet to be planned.

The probable outlook for feed grains in the 1980–81 marketing year depends a great deal on the 1980–81 outcome. It is expected that 1980–81 feed grain planted acreage will increase by three to four percent in 1981–82, assuming no feed grain set-aside program for the 1981 feed grain crops. Total feed grain supplies are expected to increase about five percent. Total use is estimated to be up about five percent with both feed use and exports expected to increase. Corn used

for gasohol production and sweeteners will continue to increase. Ending stocks for feed grains are projected to increase from 31 MMT to 34 MMT—about a 10 percent increase and well below the Department stocks objective of around 52 MMT. About 65 percent of the carryout is projected to be in free stocks. Feed grain prices are projected to remain around 1980/81 levels. Corn ending stocks would probably increase around 70 million bushels, or from a projected 983 million bushels in 1980–81 to 1,053 million bushels in 1981–82.

The above outlook would suggest that a set-aside program may not be necessary for the 1981 feed grain crops. However, later crop developments throughout the world could change this outlook. Options under consideration at this time include the following: (a) No set-aside program; (b) a percent set-aside with no paid diversion program; and (c) no set-aside program with a 10 percent paid diversion program.

Interested persons are encouraged to comment on the need for a 1981 feed grain set-aside program and the appropriate percentage of acreage to be set-aside, if deemed necessary, taking into account the above figures.

b. *Determination of the national program acreages (NPA's).* NPA for the 1981 crops of feed grains not later than November 15, 1980. The NPA shall be the number of harvested acres of the feed grains that the Secretary determines (on the basis of an estimated national weighted average farm program payment yield) will produce the quantity (less imports) that is estimated to be used domestically and for export during the 1981–82 marketing year. The NPA may be further adjusted by an amount the Secretary determines will accomplish a desired carryover stock level. The Secretary may later revise the NPA first proclaimed if the Secretary determines it is necessary based upon the latest information.

The U.S. feed grain stock objective, an amount judged to be our "fair" share of world grain stocks, has been determined to be equal to 6.7 percent of the world consumption of coarse grains, or approximately 49 MMT (1,925 million bushels corn equivalent) for feed grains for the 1980–81 marketing year.

The likely NPA for the 1981 crops of corn, sorghum, barley, and oats, are:

	Corn	Sorghum	Barley	Oats
a. Estimated domestic use, 1981–82 (Mil. Bu.)	4,980	507	375	
	515			
b. Plus estimated silage use, 1981–82 (Mil. Bu.)	635	50		
c. Plus estimated exports, 1981–82 (Mil. Bu.)	2,600	265	50	10
d. Minus estimated imports, 1981–82 (Mil. Bu.)	1		10	1
e. Plus stock adjustment [1] (Mil. Bu.)	477	133	71	104
f. Divided by national weighted average farm program payment yield [2] (Bu./Ac.)	97.0	58.2	48.7	51.4
g. Equals 1981 Crop NPA (Mil. Acres)	89.6	16.4	10.0	12.2
[1] a. Estimated 1981–82 beginning stocks (Mil. Bu.)	983	52	119	141
b. Desired carryover level for 1980–81 (Mil. Bu.)	1,460	185	190	245
c. Difference equals desired stock adjustment (Mil. Bu.)	+477	+133	+71	
	+104			

[2] Program payment yield has not been established for oats. The analysis uses the last five year's average yield (1975–1979).

These NPA's compare to the 1980 crop NPA's which were first proclaimed at 82.1, 13.9 and 7.9 million acres for corn, sorghum and barley, respectively. Oats were not eligible for payments under the 1980 Feed Grain Program. Therefore, it was not necessary to proclaim a 1980 oats NPA.

Comments on the NPA's and the appropriate stock levels for the 1981 crops of feed grains from interested persons, along with appropriate supporting data, are requested.

c. *Recommended percentage reduction from previous year's harvested acreage.* Section 105A(d)(3) of the 1949 Act provides that the 1981 individual farm program acreage of corn, sorghum, barley, and oats which are eligible for payments shall not be reduced by application of an allocation factor (not less than 80 percent nor more than 100 percent) if the producer reduces the acreage of these feed grains planted for harvest on the farm from that planted in 1980 by at least the percentage recommended by the Secretary in his proclamation of the NPA's for the 1981 crop.

The previous year's (1980) acreage will include the acreage actually harvested plus acreage considered harvested which includes prevented planted acreage. The likely national recommended reduction percentages for the 1981 crops are:

[Millions of acres]

	Corn	Sorghum	Barley	Oats
a. 1980 Est. National Harv. Ac.	81.5	13.4	7.4	8.9
b. Plus Ac. Credited as Harv.	(1)	(1)	(1)	(1)
c. Equals 1980 Considered Harv. Ac.	81.5	13.4	7.4	8.9
d. Minus 1981 Preliminary NPA	89.6	16.4	10.0	12.2
e. Equals Ac. Reduction Needed from Previous Year's Harv. Ac.	0	0	0	0
f. Divided by 1980 Considered Harv. Ac.	81.5	13.4	7.4	8.9
g. Equals 1981 Recommended Reduction (percent)	0	0	0	0

[1] Less than 50,000 acres.

With a 0% recommended reduction, a producer whose 1981 planted acreage of a crop does not exceed the producer's 1980 planted acreage of such crop would be eligible for deficiency payments on the entire 1981 planted acreage of such crop, if in compliance with other program provisions.

Comments from interested persons with respect to the reduction percentage, if any, are requested.

d. *If a set-aside is implemented, whether a limitation should be placed on planted acreage.* Section 105A(f)(1) of the 1949 Act authorizes the Secretary to limit acreage planted to corn, sorghum, and, if designated, barley and oats, if a set-aside is in effect. Such limitation is required to be applied on a uniform basis to all farms which are participating in the announced program and are producing the feed grain program crops.

Interested persons are invited to comment on the pros and cons of limiting planted acreage if a set-aside program is announced.

e. *Whether there should be a land diversion program and, if so, the extent of such diversion and the level of payment.* Section 105A(f)(2) of the 1949 Act authorizes the Secretary to implement a land diversion program and to make land diversion payments to producers of corn, sorghum and, if designated, barley and oats. Land diversion payments may be made if the Secretary determines they are necessary to assist in adjusting the total national acreage of feed grains to desired goals. If land diversion payments are made, participating producers will be required to devote to approved conservation uses an acreage of cropland equal to the amount of such land diversion.

Land diversion payments may be established at a flat rate (specific rate per bushel times farm program yield) or

through the submission of bids by producers.

If it is deemed necessary to make land diversion payments in 1981, such payments will likely be established at an offer rate. The diversion option being considered is a no set-aside program with a 10 percent paid diversion program. However, if a paid diversion program is offered for the 1981 crop, it may only be necessary for corn and sorghum—as was the situation for the 1979 Feed Grain Program. Diversion payment rates per bushel under consideration range from $1.50 to $2.00.

Interested persons are encouraged to address the need for a land diversion program, the terms and conditions and the pros and cons of a land diversion program either in place of, or in combination with, a set-aside program for 1981.

f. *Whether barley and oats should be determined to be eligible commodities for payment purposes under the feed grain program.* Section 105A(b)(1)(A) of the 1949 Act gives the Secretary discretionary authority concerning the inclusion of barley and oats as commodities which are eligible for payments under the feed grain program. In the past, oats have not been determined to be eligible for payments. Thus, oats producers were not eligible to receive deficiency of disaster payments for their crops but were eligible for the price support and farmer-held grain reserve programs. Barley has been included as a commodity for which payments can be made under the feed grain program, with the exception of the 1967, 1968 and 1971 programs.

Barley and oats acreage has been reduced significantly over the past few years, resulting in smaller supplies of both grains, especially oats. In addition, the 1980 barley and oats crops have been severely damaged by heat and drought. Barley demand has remained fairly stable. With declining production and reduced supplies, oats feed demand has fallen rapidly—from 778 million bushels fed in 1970–71 to an estimated 450 million bushels for the 1980–81 crop year. Carryover stocks for both barley and oats are expected to approach pipeline levels during the 1981–82 crop year.

Interested persons are encouraged to comment on barley and oats being included as commodities for which payments can be made under the 1981 Feed Grain Program, considering the supply and demand situation indicated above.

g. *Whether to require compliance with the established farm NCA for program benefit eligibility.* Section 1001(a) of the 1977 Act, as amended by the Agricultural Adjustment Act of 1980 (Pub. L. 96–213, 94 Stat. 119), provides that for the 1981 crops of feed grains the Secretary may require, as a condition of eligibility for loans, purchases and payments, that producers not exceed the acreage on the farm normally planted to crops designated by the Secretary (the established farm NCA).

It is proposed that an NCA requirement be established for the 1981 feed grain program as a condition of eligibility to receive program benefits.

Interested persons are invited to comment on the pros and cons of requiring compliance with the farm NCA with respect to the 1981 crops of feed grains as a condition of eligibility to receive program benefits.

h. *Determination of the 1981-crop established "price" level and, if NCA and set-aside requirements are placed in effect, whether the established "target" price should be increased to compensate producers for complying with such requirements.* Section 105A(b)(1)(B) of the 1949 Act provides that the established "target" price for the 1981 crop of corn shall be not less than the 1980 target price ($2.35) per bushel, adjusted upward to reflect such changes in the costs of producing corn as the Secretary finds necessary and appropriate for the purpose of establishing and maintaining a fair and equitable relationship between loan rates, established prices, and production costs for corn and competing commodities. Section 105A(b)(1)(D) provides that the payment rate for sorghum and, if designated, barley and oats shall be fair and reasonable in relation to the rate at which payments are made available for corn. No established "target" price was established for the 1980 oats crop. Additionally, Section 1001(b) of the 1977 Act provides that if an NCA requirement is in effect for the 1981 feed grain crops, the Secretary is authorized to increase the established "target" price for feed grains by an amount he determines appropriate to compensate producers for not exceeding the NCA and for participation in any required set-aside for feed grains.

The 1980 crop established "target" price for corn was established at $2.35 per bushel by an amendment to Section 105A of the Agricultural Act of 1949 by the Agricultural Adjustment Act of 1980 (Pub. L. 96–213, 94 Stat. 119, approved March 18, 1980). Sorghum and barley established "target" prices were determined to be $2.50 and $2.55 per bushel, respectively. Section 1001 of the 1977 Act, as amended, provides that producers who do not comply with the farm NCA requirement for the 1980 crop of feed grains would receive deficiency payments based on the lower established per bushel "target" prices ($2.05 for corn, $2.45 for sorghum, and $2.29 for barley), determined in accordance with the formula prescribed in section 105A in effect prior to the amendment by the Agricultural Adjustment Act of 1980. Established "target" prices are not intended to cover the total costs of producing feed grains, but should be established at such levels as will ensure that farmers' incomes during periods of large supplies and weak market prices will cover short-term costs. Short-term costs are defined as those costs that cannot be postponed by the producer and include (a) variable costs less producer labor; (b) machinery ownership costs less replacement costs and interest; (c) general farm overhead costs; (d) land costs (a composite of owner-operator land costs and renter and cash rental charges) and (e) a return for family living based on a median family income.

The $2.35, $2.50, and $2.55 per bushel established "target" prices for corn, sorghum and barley, respectively, approximate short-term costs of production for the 1980 crop.

Accordingly, it seems appropriate to use the estimated short-term costs for 1981 in the establishment of the 1981-crop established "target" prices for feed grains. By following this approach, the latest cost of production estimates are used in determining a subsequent year's established "target" price for feed grains rather than historical costs as have been used in determining established "target" prices for feed grains in prior years.

Depending on projected short-term costs and yields, 1981 per bushel "target" prices could range as follows: Corn—$2.55 to $2.70; sorghum—$2.70 to $2.90; barley—$2.75 to $3.10; and oats—$1.50 to $1.70.

The authority to increase established "target" prices to compensate producers for participation in a set-aside has been used for both 1978 and 1979 when set-aside programs have been in effect. When increasing the established "target" prices, the Secretary is required to take into account changes in the cost of production resulting from producers (1) not exceeding the NCA requirements and (2) participating in any required set-aside program. For 1978 and 1979, the increase in established "target" prices was approximately 10 cents with a 10 percent set-aside.

Based on the estimated changes in the 1981-crop costs of production, it appears that a 10 to 15 cent increase in the established "target" price for 1981 corn would probably be considered as necessary compensation to producers

participating in a 10 percent set-aside. Other feed grains would be raised accordingly, depending upon the level of set-aside and the costs of production.

Interested persons are encouraged to comment with respect to the method by which the established "target" price for the 1980 crops of feed grains should be adjusted upward to determine the 1981 established "target" price and whether the established "target" price should be further adjusted if NCA or set-aside requirements are implemented.

i. *The loan and purchase level for the 1981 crop of feed grains.* Section 105A(a)(1) of the 1949 Act requires the Secretary to make available to producers loans and purchases for the 1981 crop of corn at not less than $2.00 per bushel, as the Secretary determines will encourage the export of feed grains and not result in excessive total stocks. However, if the Secretary determines that the average price of corn received by producers in the 1980 marketing year is not more than 105 percent of the level of loans and purchases for corn, the Secretary may reduce the level of loans and purchases for corn for the 1981 marketing year by the amount the Secretary determines necessary to maintain domestic and export markets for grain. However, the level of loans and purchases shall not be reduced by more than 10 percent in any year, nor below $1.75 per bushel. Loan and purchase levels being considered for the 1981 crop of corn range from $2.25 per bushel to $2.35 per bushel.

Section 105A(a)(2) of the 1949 Act requires the Secretary to make available to producers loans and purchases on the 1981 crop of sorghum, at such level as the Secretary determines is fair and reasonable in relation to the level that loans and purchases are made available for corn, taking into consideration the feeding value and average transportation costs to market for sorghum in relation to corn.

The Secretary shall also make available loans and purchases on the 1981 crops of barley, oats, and rye at such levels as the Secretary determines are fair and reasonable in relation to the level that loans and purchases are made available for corn, taking into consideration the feeding value of each commodity in relation to corn and other factors specified in section 401(b) of the 1949 Act. These factors are: (1) The supply of the commodity in relation to demand; (2) the price levels at which other commodities are being supported; (3) the availability of funds; (4) the perishability of the commodity; (5) the importance of the commodity to agriculture and the national economy; (6) the ability to dispose of stocks acquired through a price support operation; (7) the need for offsetting temporary losses of export markets; and (8) the ability and willingness of producers to keep supplies in line with demand.

Soybeans

Section 201(e) of the 1949 Act requires the Secretary to make available to producers loans and purchases on the 1981 crop of soybeans, at such level as the Secretary determines appropriate in relation to competing commodities and taking into consideration domestic and foreign supply and demand factors. Loan and purchase levels being considered for the 1981 crop range from $5.02 per bushel to $5.25 per bushel.

World soybean production for 1980–81 is still highly uncertain. Hot, dry conditions have reduced yield prospects in the U.S., particularly in Arkansas and Mississippi. Beginning world soybean stocks for 1980–81 of around 13.0 MMT are at a record level. The growth in world consumption of oilseed products will continue. However the rate of growth for soybean meal consumption may decline, reflecting higher meal prices, slowing livestock expansion and weakening economic conditions in many consuming countries.

Comments are requested on the appropriate loan and purchase levels for the 1981 crops of corn, sorghum, barley, oats, rye, and soybeans, taking into account the above factors.

Other Related Provisions

A number of other determinations must be made in carrying out the feed grain and soybean loan and purchase program such as: (a) Commodity eligibility; (b) premiums and discounts for grades, classes, and other qualities; (c) establishment of county loan and purchase rates; and (d) such other provisions as may be necessary to carry out the program.

Consideration will be given to any data, views and recommendations that may be received relating to above items.

Signed at Washington, D.C., on September 5, 1980.

Ray Fitzgerald,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 80-27753 Filed 9-8-80; 8:45 am]

BILLING CODE 3410-05-M

Rural Electrification Administration

Final Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration (REA) has prepared a Final Environmental Impact Statement in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with a request by Alabama Electric Cooperative, Inc. (AEC), P.O. Box 550, Andalusia, Alabama 36420, for a reclassification of existing guaranteed loan funds to provide long-term financing for the purchase of a leasehold interest in coal property. The properties are located in northeastern Marion County, southeastern Franklin County, southeast Winston County, northeast Lamar County, and southern Marion County, Alabama.

The project involves an ongoing mining activity. Alabama Electric Cooperative will not mine the coal nor purchase or own equipment associated with mining and transportation of the coal. Alabama Electric will contract for the mining of the coal on the properties.

Additional information may be secured on request, submitted to Mr. Joe S. Zoller, Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Copies of the REA Final Environmental Impact Statement have been sent to various Federal, State and local agencies, as outlined in the Council on Environmental Quality Guidelines and the following libraries: Carl Elliot Regional Library, 20 E 18th Street, Jasper, Alabama and North West Regional Library, 130 N 1st Street, Winfield, Alabama 35594. The Final Environmental Impact Statement may also be examined during regular business hours at the offices of REA in the South Agriculture Building, 12th Street and Independence Avenue, S.W., Washington, D.C., or at the borrower address indicated above.

Final REA action with respect to this matter (including any release of funds) will be taken only after REA has reached satisfactory conclusions with respect to its environmental effects and after procedural requirements set forth in the National Environmental Policy Act of 1969 have been met.

Dated at Washington, D.C., this 11th day of August 1980.

Susan T. Shepherd,

Acting Administrator, Rural Electrification Administration.

[FR Doc. 80-27426 Filed 9-8-80; 8:45 am]

BILLING CODE 3410-15-M

CIVIL AERONAUTICS BOARD

[Order 80-9-14]

Application of Air Jamaica Ltd.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: Order 80-9-14.

SUMMARY: The Board proposes to approve the following application:

Applicant: Air Jamaica Limited.

Application Date: September 5, 1979.

Docket: 36529.

Authority Sought: Renewal and amendment of its foreign air carrier permit to operate scheduled services between Jamaica and any ten U.S. coterminal points via intermediate and beyond points, as well as specified charter authority, subject to conditions and limitations.

Objections

All interested persons having objections to the Board's tentative findings and conclusions that these actions should be taken, as described in the order cited above, shall, no later than September 29, 1980, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of Jamaica in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit.

ADDRESS OBJECTIONS TO:

Docket 36529, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

Applicant: Air Jamaica Limited, c/o Albert F. Grisard, Suite 1014, 1435 G Street, NW., Washington, D.C. 20005.

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT:

C. Robert Mallalieu, Negotiations Analysis Division, Bureau of International Aviation, Civil Aeronautics Board: (202) 673-5044.

By the Civil Aeronautics Board: September 3, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-27653 Filed 9-8-80; 8:45 am]

BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended August 29, 1980 CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

Subpart Q Applications

Date filed	Docket No.	Description
Aug. 25, 1980	38630	Bonavair Ltd., Ottawa International Airport, Box 8980 Terminal, Ottawa, Ontario, K1G 3J2. Application of Bonavair Ltd. pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests a foreign air carrier permit authorizing small aircraft charter operations between Canada and the United States pursuant to the nonscheduled air service agreement. Answers may be filed by September 22, 1980.
Aug. 26, 1980	38642	Challenge Air Transport, Inc., c/o Arthur D. Bernstein, Galland, Kharasch, Calkins & Short, 1054 Thirty-First Street, N.W., Washington, D.C. 20007. Application of Challenge Air Transport, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests authority to perform the following foreign charter air transportation of property and mail: Between any point in any state of the United States, or the District of Columbia, or any territory or possession of the United States, and (a) Any point in Canada; (b) Any point in Mexico; (c) Any point in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Trinidad, Aruba, the Leeward and Windward Islands, and any other foreign place located in the Gulf of Mexico or the Caribbean Sea; (d) Any point in Central and South America; and (e) Any point in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east via a transpacific routing; (f) Any point in Greenland, Iceland, the Azores, Europe, Africa, and Asia as far east as (and including) India. Conforming Applications and Answers are due September 23, 1980.
Aug. 25, 1980	29833	Transporturile Aeriene Romane (TAROM), c/o John G. Adams, Adams & Reiber, Suite 921, 1625 I Street, N.W., Washington, D.C. 20006. Amended Application of Transporturile Aeriene Romane (TAROM) pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests that it be issued a new foreign air carrier permit pursuant to Section 402 of the Act, authorizing it to engage in the scheduled foreign air transportation of persons, their accompanying baggage, property and mail: From Romania via points in Czechoslovakia, Austria, the Federal Republic of Germany, France, Denmark, Belgium, the Netherlands, and Montreal, Canada, to New York, in both directions. Answers may be filed by September 22, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-27655 Filed 9-8-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of the American Statistical Association; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the Census Advisory Committee of the American Statistical Association will convene on September 25 and 26, 1980, at 9 a.m. The Committee will meet in Room 2424, Federal Building 3, at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee of the American Statistical Association

was established in 1919. It advises the Director, Bureau of the Census, on the Bureau's programs as a whole and on their various parts, considers priority issues in the planning of censuses and surveys, examines guiding principles, advises on questions of policy and procedures, and responds to Bureau requests for opinions concerning its operations.

The Committee is composed of 15 members appointed by the President of the American Statistical Association.

The agenda for the September 25 meeting, which will adjourn at 5:30 p.m., is: (1) Introductory remarks by the Director of the Bureau of the Census, including (a) staff changes and Bureau organization, (b) major budget and program developments, and (c) other topics of current interest; (2) discussion of premises on which the Census Bureau will base its decision on adjustment of the 1980 census; (3) proposed Census Bureau policy on data modification (adjustment, editing, imputation, substitution and weighting); (4) statistical standards and user needs in presenting Census Bureau data; (5) use of area samples in the 1982 Census of Agriculture; and (6) Committee meeting to develop recommendations.

The agenda for the September 26 meeting, which will adjourn at 12:30 p.m., is: (1) Status report on the 1980 census; (2) Committee discussion of recommendations; (3) Census Bureau research organization and professional statistical career paths; (4) Committee and Census Bureau staff discussion on (a) Bureau responses to prior Committee recommendations, (b) status of specific Bureau activities, and (c) Bureau activities described at earlier Committee meetings; and (5) recommendations, plans, and suggested agenda items for the next meeting.

The meeting will be open to the public, and a brief period will be set aside on September 26 for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Control Officer at least 3 days prior to the meeting.

Persons wishing additional information concerning this meeting or who wish to submit written statements may contact the Committee Control Officer, Mr. James L. O'Brien, Assistant Chief, Statistical Research Division, Bureau of the Census, Room 3577, Federal Building 3, Suitland, Maryland. (Mail address: Washington, D.C. 20233). Telephone (301) 763-7530.

Dated: September 3, 1980.

Vincent P. Barabba,

Director, Bureau of the Census.

[FR Doc. 80-27538 Filed 9-8-80; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Industry Advisory Committees for Trade Policy Matters; Open Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: A meeting of the committees listed below will be held September 24, 1980. The committees were established to provide advice to the Secretary of Commerce and the U.S. Trade Representative on trade negotiations and other matters arising in connection with the administration of U.S. trade policy.

Industry Policy Advisory Committee for Trade Policy Matters

Industry Sector Advisory Committees for Trade Policy Matters (ISACs)

On Aerospace Equipment (ISAC 1)
On Capital Goods (ISAC 2)
On Chemicals and Allied Products (ISAC 3)
On Consumer Goods (ISAC 4)
On Electronics and Instrumentation (ISAC 5)
On Energy (ISAC 6)
On Ferrous Ores and Metals (ISAC 7)
On Footwear, Leather, and Leather Products (ISAC 8)
On Industrial and Construction Material and Supplies (ISAC 9)
On Lumber and Wood Products (ISAC 10)
On Nonferrous Ores and Metals (ISAC 11)
On Paper and Paper Products (ISAC 12)
On Services (ISAC 13)
On Small and Minority Business (ISAC 14)
On Texiles and Apparel (ISAC 15)
On Transportation, Construction, and Agricultural Equipment (ISAC 16)
On Wholesaling and Retailing (ISAC 17)
Industry Functional Advisory Committee on Customs Valuation for Trade Policy Matters
Industry Functional Advisory Committee on Standards for Trade Policy Matter.

TIME AND PLACE: Wednesday, September 24, 1980; U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC

Plenary Session: 9:30 a.m. to 12:15 p.m.—Auditorium.

Workshops: 2:00 p.m. to 3:30 p.m.—Conference Rooms A/B, 6029, 3836.

AGENDA:

Plenary Session: 1. Framework of International Trade Policy and Continuing Role of Advisory Process

2. Congressional Perspectives on the Advisory Process

3. Private Sector Experience with the Advisory Process

Workshops: Workshop will feature discussion of current trade policy matters such as implementation of the MTN agreements and U.S. export policy.

PUBLIC PARTICIPATION: Limited seating for the public is available.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Redding, Trade Advisory Center, Room 3036, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: 202-377-3268.

Dated: September 5, 1980.

Frederick L. Montgomery,

Acting Deputy Assistant Secretary for Trade Agreements.

[FR Doc. 80-27742 Filed 9-8-80; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Mid-Atlantic Fishery Management Council's public meeting notice, published in the Federal Register, Volume 45, No. 164, dated August 21, 1980, is amended as follows:

The meeting will convene on Wednesday, September 10, 1980, at approximately 1:00 p.m., and adjourn on Thursday, September 11, 1980, at approximately 2:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mid-Atlantic Fishery Management Council, North and New Streets, Room 2115—Federal Building, Dover, Delaware 19901. Telephone: (302) 674-2331

Dated: September 3, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-27871 Filed 9-8-80; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council and Scientific and Statistical Committee and Advisory Panel; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The North Pacific Fishery Management Council, established by

Section 302 of the Fishery Conservation and Management Act (FCMA) of 1976 (Public Law 94–265), its Scientific and Statistical Committee (SSC) and Advisory Panel (AP) will hold joint and separate meetings.

DATES: The Council meeting will convene Wendesday, September 24, 1980, at 9:00 a.m., and adjourn Friday, September 26, 1980, at 5:00 p.m., in the Baranoff Auditorium of the Centennial Building, Sitka, Alaska. The SSC meeting will convene Tuesday, September 23, 1980, at 9:00 a.m., and will adjourn at 5:00 p.m., in the Rousseau Room of the Centennial Building. The AP meeting will convene Tuesday, September 23, 1980, at 9:00 a.m., and will adjourn at 5:00 p.m., in the Baranof Auditorium of the Centennial Building. The meetings may be lengthened or shortened depending upon progress on the agenda. The meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council, P.O. Box 3136 DT, Anchorage, Alaska 99510. Telephone: (907) 274–4563

Proposed Agenda:

Council

Special Note: Preregistation (except in special or unusual cases) will be required for all public comments which pertain to a specific agenda topic. Preregistration is accomplished by informing the Agenda Clerk as early as possible of the agenda item to be addressed and the time requested. Preregistration and public comment may be scheduled for the following agenda topics: C. Old business; D. New business; E. fishery management plans (FMP's).

The follwing agenda items will be discussed by the Council: A. Call to order, approval of agenda, and minutes of the previous meetings. B. Special reports. B–1. Executive Director's Report. B–2. Alaska Department of Fish and Game (ADF&G) Report on Domestic Fisheries. B–3. National Marine Fisheries Service Report on Foreign Fisheries. B–4. U.S. Coast Guard Report on Enforcement and Surveillance. B–5. National Marine Fisheries Service Report on Tanner Crab Resource Survey in the Bering Sea. B–6. U.S./Canada Negotiations Report by Dr. Lee Alverson. C. Old business. C–1. Policy and Planning Report. C–2. FCMA Amendments Workgroup Report. C–3. Joint Venture (J/V) Closure Criteria Workgroup Report. D. New business. D–1. Foreign Fishing Permits. D–2. Pletnikoff Proposal for J/V with Taiwan. D–3. Request for Advisory Panel nominees for re-organization of AP at October meeting and notice of re-organization of the Scientific and Statistical Committee in December. D–4. Election of Council Officers. D–5. Other new business as appropriate.

E. Fishery Management Plans (FMP's). E–1. Tanner Crab FMP: Council approval of 1981 amendment options to go forward for public comment. E–2. King Crab FMP: Set hearing dates and locations. E–3. Bering Sea/Aleutian Islands Groundfish FPM: Set public hearing dates for 1981 amendments; call for proposals for 1982 amendments. E–4. Gulf of Alaska Groundfish FMP; Call for proposals for 1982 amendments. E–5. Salmon FMP: council approval of proposed 1981 amendments to go to public comment. E–6. Herring FMP; Initial Council review and approval of Herring FMP. F. Contracts, proposals, and financial reports. F–1. Contract 77–5, Groundfish Observer Program: final approval. F–2. Contract 78–4, Computerized Fishries Information System: final approval. F–3. Contract 79–3, Troll Salmon Tag Recovery Program: final approval. F–4. Contract 80–2, Halibut Fish Tickets: possible final approval. F–5. Contract 80–5, A Study of the Off-shore Chinook and Coho Salmon Fishery Off Alaska: possible first draft of final report. F–6. Two new proposals, halibut pot study and ADF&G data position. F–7. Financial Status Report. G. Public comments. H. Chairman's closing comments and adjournment.

SSC and AP agenda same as council agenda.

Dated: September 3, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80–27673 Filed 9–8–80; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council's Information and Education Advisory Panel; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The South Atlantic Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94–265), has established an Information and Education Advisory Panel, which will meet to discuss and make recommendations regarding upcoming Fishery Management Plan public hearings, proposed Information and Education efforts, and other Information and Education activities as deemed appropriate and necessary.

DATE: The meeting, which is open to the public, will convene on Wednesday, September 17, 1980, at approximately 9:00 a.m., will adjourn at approximately 5:00 p.m.

ADDRESS: The meeting will take place at the Council Headquarters, One Southpark Circle, Charleston, South Carolina.

FOR FURTHER INFORMATION CONTACT: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, South Carolina 29407. Telephone: (803) 571–4366.

Dated: September 3, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80–27672 Filed 9–8–80; 8:45 am]

BILLING CODE 3510–22–M

Office of the Secretary

Open Meeting of the U.S. Delegation to the International Laboratory Accreditation Conference

The Fourth Annual International Laboratory Accreditation Conference (ILAC/80) will be held in Paris, France on October 27–31, 1980. In order to prepare for this conference, the U.S. Delegation to ILAC will participate in a pre-conference briefing on Tuesday afternoon, September 23 beginning at 1:00 p.m. in Room 3817, U.S. Department of Commerce Building, 14th Street between Constitution Avenue and "E" Street N.W., Washington, D.C.

Subjects to be covered are contained in the reports of ILAC Task Forces A, B, and C and the definitions to be used in accrediting laboratories compiled by an ad hoc working group representing ILAC and the International Standards Organization (ISO).

Copies of these documents may be obtained by request from Dr. Howard I. Forman, Room 3876, Main Commerce Building, 202 377–3221.

The public is invited to attend this meeting on an unreserved, first-come first-served basis, to the limit of available facilities remaining after the delegation is accommodated.

Dated: September 3, 1980.

Jordan J. Baruch,

Assistant Secretary for Productivity, Technology and Innovation.

[FR Doc. 80–27615 Filed 9–8–80; 8:45 am]

BILLING CODE 3510–18–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Additional Import Controls on Certain Wool Textile Products From the Republic of Korea

September 5, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Controlling wool sweaters in Category 445/446, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1980, at the agreed specific ceiling of 49, 915 dozen.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463) and August 12, 1980 (45 FR 53506)).

SUMMARY: Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea, the United States Government has decided to control imports of wool textile products in Category 445/446, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1980, in addition to those categories previously designated.

EFFECTIVE DATE: September 9, 1980.

FOR FURTHER INFORMATION CONTACT: William Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230. (202/377–5423).

SUPPLEMENTARY INFORMATION: On December 27, 1979, there was published in the Federal Register (44 FR 76573) a letter dated December 20, 1979 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980. In accordance with the terms of the bilateral agreement, as amended, the United States Government has decided also to control imports of wool textile products in Category 445/446, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1980, at the specific ceiling of 49,915 dozen. Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry for consumption, or withdrawal from warehouse for consumption, of wool textile products in Category 445/446 in excess of the designated level of restraint. The level of restraint has not been adjusted to account for imports after December 31, 1979. Imports in Category 445/446 during the period January-July 1980 have amounted to 46,063 dozen and will be charged. As the data become available, further import charges will be made for the period which began on August 1, 1980 and extends to the effective date of this directive.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

September 5, 1980.

Committee For the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1979 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on September 9, 1980 and for the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 445/446, produced or manufactured in the Republic of Korea in excess of 49,915 dozen.

Wool textiles products in Category 445/446 which have been exported to the United States prior to January 1, 1980 shall not be subject to this directive.

Wool textile products in Cateogory 445/446 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 F.R. 13172), as amended on April 23, 1980 (45 F.R. 27463) and August 12, 1980 (45 F.R. 53506).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of wool textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-27842 Filed 9-8-80; 10:07 am]

BILLING CODE 3510-25-M

The level of restraint has not been adjusted to reflect any imports after December 31, 1979. Imports during the January, July period of 1980 have amounted to 3,673 dozen in Category 445 and 42,390 dozen in Category 446.

COMMODITY FUTURES TRADING COMMISSION

Proposed Futures Contract; Notice of Availability

The Commodity Futures Trading Commission ("Commission") is making available and requesting public comment on a plywood contract proposed to be traded by the Chicago Mercantile Exchange. Copies of this proposed contract will be available at the Commission's offices in Washington, New York, Chicago, Minneapolis, Kansas City and San Francisco. The Commission will also furnish copies upon request made to the Commission Secretary.

Any person interested in expressing views on the terms and conditions of this proposed contract should send comments by October 9, 1980, to Ms. Jane Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, D.C., 20581. (202) 254-6314. Copies of all comments will be available for inspection at the Commission's Washington office.

Issued in Washington, D.C., on September 3, 1980.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 80-27539 Filed 9-8-80; 8:45 am]

BILLING CODE 6351-01-M

Publication of and Request for Comment on Proposed Rules Having Major Economic Significance; Amendment to Regulation 1081.01(11) of the Chicago Board of Trade

The Commodity Futures Trading Commission, in accordance with section 5a(12) of the Commodity Exchange Act ("Act"), 7 U.S.C. 7a(12) (1976), as amended by the Futures Trading Act of 1978, Pub. L. No. 95-405, section 12, 92 Stat. 871 (1978), has determined that the proposed amendment set forth below to regulation 1081.01(11) submitted by the Chicago Board of Trade is of major economic significance. The proposed amendment to regulation 1081.01(11) eliminates the maximum load-out charges on grain, thereby allows warehouses to set load-out charges freely.

The amendment to regulation 1081.01(11) of the Chicago Board of Trade is printed below, showing deletions in brackets and additions underscored:

1081.01(11) Regularity of Warehouses

No warehouse shall be deemed suitable to be declared regular if its location, accessibility, tariffs, insurance rates, or other qualifications shall depart from uniformity to the extent that its receipts, if tendered in satisfaction of futures contracts, will unduly depress the values of futures contracts or impair the efficacy of futures trading in this market, or if the warehouseman operating such warehouses engaged in unethical or inequitable practices, or if, being a federally licensed warehouse fails to comply with the federal statute rules or regulations or being a state licensed warehouse fails to comply with the state statutes, rules and regulations.

All warehousemen are and shall be and remain subject to the Rules, Regulations and Rulings of the Board of Trade of the City of Chicago on all subjects and in all areas with respect to which the U.S. Department of Agriculture does not assert jurisdiciton pursuant to the U.S. Warehouse Act, as amended.

A regular warehouseman or an owner of warehouse receipts can make delivery in a strike bound elevator. The taker of delivery is liable for all storage charges. However, where the owner of warehouse receipts in a strike bound elevator delivered against futures contracts has a bona fide bid for like receipts in a strike free elevator and decides to load the grain out or sell his receipts, the strike bound warehouseman has the option:

(a) to provide that same quantity and like quality of grain in store in another regular warehouse, not on strike, in the same delivery market, or

(b) to provide that same quantity and like quality of grain in store at another location on mutually acceptable terms, or

(c) if no initial agreement can be reached as provided above, the strike bound warehouseman must buy his warehouse receipts back at the bid price in store for that same quantity and like quality of grain in a strike free elevator in the same delivery market or he has the alternative of proceeding as in (a) above. The bid (which must be a basis bid versus futures) referred to in this paragraph must be good for a minimum period of one hour and must be tendered in writing to the strike bound warehouseman between 1:30 p.m. and 4:30 p.m. on a business day and prior to 8:30 a.m. but not before 7:30 a.m. on the following business day.

The warehousemen must respond to the bid as outlined above within the time period during which the bid is alive.

Should the warehouseman question the validity of the bid, the question shall be referred to a Standing Committee which shall have been appointed on an annual basis by the Chairman of the Board, with the approval of the Board. The Committee shall consist of three members including one regular warehouseman with suitable alternates. In case the strike bound elevator involved is in a market other than that directly represented by the warehouseman appointed, the Chairman may designate a member in said alternate market who is familiar with cash grain values in that market. The sole duty of the Committee shall be to determine that the bid is bona fide. The Committee shall not express any opinion with respect to the economics of the bid.

Within the cointext of this Regulation, a strike bound elevator is defined as the facility itself being on strike.

[The maximum load-out charge on grain which has been tendered in satisfaction of the Board of Trade futures contracts shall be 3¢ perbushel, effective July 1, 1970, regardless of the date of the warehouse receipt. Effective August 1, 1974 the maximum load-out charge of Board of Trade futures contracts shall be 5¢ per bushel regardless of the date of the warehouse receipt.]

Any person interested in submitting written data, views, or arguments on these regulations should send comments by October 9, 1980, to Ms. Jane K. Stuckey, Secretariat, Commodity Futures Commission, 2033 K Street, NW., Washington, D.C. 20581.

Issued in Washington, D.C., on September 3, 1980.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 80-27705 Filed 9-8-80; 8:45 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 80-4]

Advance Machine Co., Inc., et al.; Publication of Complaint

AGENCY: Consumer Product Safety Commission.

ACTION: Publication of a complaint under the Consumer Product Safety Act.

SUMMARY: Under provisions of its Rules of Practice for Adjudicative Proceedings (16 CFR Part 1025, 45 FR 29206), the Consumer Product Safety Commission must publish in the Federal Register Complaints which it issues under the Consumer Product Safety Act. Printed below is a Complaint in the matter of Advance Machine Co., Inc. formerly also doing business as Commercial Mechanisms, Inc., and Robert J. Pond, individually, and as an officer of the corporation and former officer of Commercial Mechanisms, Inc.

Dated: September 3, 1980.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Nature of the Proceedings

In the Matter of Advance Machine Company, Inc., a corporation, formerly also doing business as Commercial Mechanisms, Inc., and Robert J. Pond, individually, and as an officer of the corporation and former officer of Commercial Mechanisms, Inc.

1. This is an Adjudicative Proceeding under the Consumer Product Safety Commission's Rules of Practice for Adjudicative Proceedings, 45 FR 29215 (May 1, 1980) (to be codified in 16 CFR Part 1025), for the assessment of a civil penalty against the respondents in the sum of five hundred thousand dollars ($500,000) pursuant to section 20 of the Consumer Product Safety Act (hereinafter, the "CPSA"), 15 U.S.C. 2051, 2069

Respondents

2. Respondent Advance Machine Company, Inc. (hereinafter "Advance") is a Minnesota

corporation with corporate offices located at 4080 Sunset Drive, Spring Park, Minnesota.

3. Advance owned, controlled and operated Commercial Mechanisms, Inc. (hereinafter "CMI"), a Missouri corporation, until CMI was disolved by Advance in December 1975.

4. At times relevant to the transactions alleged herein, Advance manufactured various products through its subsidiary, CMI, and as such Advance and CMI, prior to its dissolution in December 1975, were manufacturers as the term "manufacturer" is defined in section 3(a)(4) of the CPSA, 15 U.S.C. 2052(a)(4).

5. Respondent Robert J. Pond is the President of Advance and was the President of CMI prior to December 1975. As such, he controls or controlled the acts, practices and policies of Advance and CMI.

Consumer Products

6. Respondents have been engaged in the distribution in "commerce," as that term is defined in section 3(a)(12) of the CPSA, 15 U.S.C. 2052(a)(12), of automatic baseball pitching machines (hereinafter "pitching machines"), sold under various names including, but not limited to, the "T.C.," the "T.D.," the "Special," the "Champ," the "Blazer," the "Professional," the "Range," and the "Olympia.".

7. The pitching machines were manufactured by Advance Machine Company, Inc. through its wholly owned subsidiary, CMI.

8. The pitching machines were distributed by the respondents for sale or use of consumers in or around a permanent or temporary household or residence, a school, in recreation or otherwise and are therefore "consumer products," as that term is defined in section 3(a)(1) of the CPSA, 15 U.S.C. 2052 (a)(1).

9. Respondents manufactured and sold approximately 7,500–8,000 pitching machines between the years 1962 and 1975.

10. The pitching machines consist of a metal frame containing a gas or electric motor connected to a pulley system which in turn, is connected to a circular metal hub. The hub and an attached metal pitching arm are mounted on one side of the machine. A baseball basket or cylindrical baseball rack is mounted on the top of the machine. A cable runs from a heavy spring in the bottom rear portion of the machine to the pitching arm hub.

11. The machine motor propels the pulley system which causes the hub and metal pitching arm to rotate slowly in a clockwise manner. As the arm approaches the six o'clock position tension begins to build in the heavy spring and cable. The metal pitching arm continues slowly towards the nine o'clock position where it can pick up a ball at the mouth of the ball rack. as the arm begins to rise towards the twelve o'clock position the tension increases until a critical point is reached at which time the metal pitching arm flies suddenly and swiftly forward and downward.

Defect

12. At times, even though the pitching machine is disconnected from its power source, the spring and cable retain a high degree of tension. Under these conditions, a slight vibration can cause the machine's metal pitching arm to suddenly and unexpectedly pitch swiftly forward and downward.

13. The sudden, unexpected, swift forward and downward motion of the metal pitching arm can result, and has resulted, in severe personal injuries to consumers struck by the metal pitching arm.

14. Until January 1974, the pitching machine did not have a safety guard or shield or any other effective safety device(s) to keep consumers away from the area through which the metal pitching arm travels.

15. The potential for the metal pitching arm of the pitching machine to unexpectedly activate with great force and speed while the pitching machine is disconnected from its power source is a defect which could create a substantial product hazard as that term is defined in section 15(a)(2) of the CPSA. 15 U.S.C. 2064(a)(2).

16. Between the years 1962 and 1975, respondents distributed in commerce approximately 7,500–8,000 pitching machines, described in paragraphs six through eleven of this Complaint, which contained a defect which could create a substantial product hazard.

Violation

17. By January 1974 and thereafter, respondents knew that numerous severe personal injuries had been caused by the sudden and unexpected activation of the metal arm of a pitching machine which was disconnected from its power source, and that, based on such injuries, numerous claims and product liability lawsuits had been lodged against them and/or their insurance carriers.

18. Therefore, the respondents had obtained information by January 1974 and thereafter which reasonably supported the conclusion that the pitching machines contained a defect which could create a substantial product hazard.

19. The respondents knew of the existence and the authority of the Consumer Product Safety Act prior to January 1974.

20. The respondents, at the time they obtained information which reasonably supported the conclusion that the pitching machines contained a defect which could create a substantial product hazard, were subject to the requirements for notification of defect pursuant to 15 U.S.C. 2064(b) and the Commission's regulations for substantial product hazard notifications then in effect, 16 CFR Part 1115.

21. The respondents failed to inform the Commission by January 1974 or at any time thereafter that they had obtained information which reasonably supported the conclusion that the pitching machines contained a defect which could create a substantial product hazard, as required by section 15(b)(2) of the CPSA, 15 U.S.C. 2064(b)(2).

22. By failing to inform the Commission immediately after they had obtained information which reasonably supported the conclusion that the pitching machines contained a defect which could create a substantial product hazard, respondents knowingly committed a prohibited act under section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

Relief Sought

Wherefore, the staff of the Consumer Product Safety Commission believes that the following relief is in the pulic interest and requests that the Commission, after affording interested persons an opportunity for a hearing:

1. Determine that respondents had obtained information by January 1974 and thereafter which reasonably supported the conclusion that the pitching machines described in paragraphs six through eleven of this Complaint contained a defect, which could create a substantial product hazard and which was subject to the reporting requirements of section 15(b)(2) of the CPSA, 15 U.S.C. 2064(b)(2).

2. Determine that respondents knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), by failing to immediately report the existence of the defect described in paragraphs twelve through sixteen of this Complaint, as required by section 15(b)(2) of the CPSA, 15 U.S.C. 2064(b)(2).

3. Pursuant to section 20(a) of the CPSA, 15 U.S.C. 2069(a), assess a civil penalty in the amount of five hundred thousand dollars ($500,000) jointly and severally against respondents Advance Machine Company, Inc., a corporation, formerly also doing business as Commerical Mechanisms, Inc., and Robert J. Pond, individually, and as an officer of Advance Machine Company, Inc., and former officer of Commerical Mechanisms, Inc., for knowingly violating section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), by failing to furnish information as required by section 15(b)(2) of the CPSA, 15 U.S.C. 2064(b)(2), as alleged in this Complaint.

4. Grant such other and further relief as the Commission deems necessary to protect the public health and safety and to implement the CPSA.

Dated: August 5, 1980.

David Schmeltzer,

Associate Executive Director for Compliance and Enforcement.

List and Summary of Documentary Evidence Supporting the Charges

In the matter of Advance Machine Company, Inc., a corporation, fomerly also doing business as Commerical Mechanisms, Inc., and Robert J. Pond, individually, and as an officer of the corporation and former officer of Commerical Mechanisms, Inc.

A list and summary of documentary evidence supporting the charges contained in the Complaint issued in this matter is provided herewith pursuant to section 1025.11 of the Commission's Rules of Practice for Adjudicative Proceedings, 45 FR 29216 (May 1, 1980) (to be codified in 16 CFR 1025.11). Complaint Counsel reserves the right to offer additional evidence during the course of this proceeding.

1. CPSC Establishment Inspection Report.

This report contains the findings obtained by CPSC investigators during the initial inspection of Advance on February 22, 1977.

2. CPSC Engineering Report.

This report contains the CPSC engineering evaluation of a pitching machine

manufactured by the respondents and obtained by the Commission on July 26, 1977.

3. Respondents' letter offering to sell arm guard.

By this letter of July 19, 1974, respondents informed owners of pitching machines that complaints had been received concerning injuries to users of the machines and that in order to "avoid any further litigation or complaints," each owner should purchase an arm guard at a cost of $45.00, plus freight.

4. Personal injury claims.

These documents identify victims and describe personal injuries alleged to have resulted from the defect in respondents' pitching machines. Among the victims and injuries are the following:

Name of victim	Description of injury	Date of injury
Lawrence Schmitt	Fractured skull; broken nose; severe facial lacerations	Mar. 24, 1965.
Jerry Williams	Loss of sight in one eye	Mar. 23, 1972.
Ronald Wussow	Fractured skull	July 3, 1972.
Michael Mankin	Head injuries	Jan. 1, 1973.
Larry Pierce	Fractured skull; permanent cosmetic and possible neural damage.	Mar. 19, 1973.
Lorraine Bryant	Loss of sight in one eye; head injuries	June 29, 1974.
Harvey Berndt	Loss of sight in one eye; facial damage	Feb. 24, 1975.
Gary Campbell	Fractured skull; paralysis	Mar. 14, 1976.
John Roth	Fractured skull; sensory/motor impairment	Mar. 24, 1976.
Terry Lee Holley	Fractured skull; permanent brain damage	July 20, 1976.

5. Correspondence between respondents and the distributor of the pitching machines concerning newly enacted Consumer Product Safety Act.

This exchange of correspondence on December 27, 1972 and January 8, 1973 between the respondents and the main distributor of the pitching machines discusses the then newly enacted Consumer Product Safety Act and the "implications involved" in the terms of the safety of the pitching machines.

[FR Doc. 80-27676 Filed 9-8-80; 8:45 am]
BILLING CODE 6355-01-M

[CPSC Docket No. 80-5]

Athlone Industries, Inc. et al.; Publication of Complaint

AGENCY: Consumer Product Safety Commission.

ACTION: Publication of a Complaint under the Consumer Product Safety Act.

SUMMARY: Under Provisions of its Rules of Practice for adjudicative Proceedings (16 CFR Part 1025, 45 FR 29206), the Consumer Product Safety Commission must publish the Federal Register Complaints which it issues under the Consumer Product Safety Act. Printed below is a Complaint in the matter of Athlone Industries, Inc., also doing business as Dudley Sports Co., and Harold J. Miller and Charles H. Gilbert, individually and as officers of the corporation.

Dated September 3, 1980.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Nature of the Proceedings

In the Matter of Athlone Industries, Inc., a corporation, also doing business as Dudley Sports Company, and Harold J. Miller and Charles H. Gilbert, individually and as officers of the corporation.

1. This is an Adjudicative Proceeding under the Consumer Product Safety Commission's Rules of Practice for Adjudicative Proceedings, 45 FR 29215 (May 1, 1980) (to be codified in 16 CFR Part 1025), for the assessment of a civil penalty against the respondents in the sum of five hundred thousand dollars ($500,000) pursuant to section 20 of the Consumer Product Safety Act (hereinafter, the "CPSA"), 15 U.S.C. 2051, 2069.

Respondents

2. Respondent Athlone Industries, Inc. (hereinafter "Athlone") is a Delaware corporation with corporate offices located at 200 Webro Road, Parsippany, New Jersey.

3. Athlone owns, controls and operates Dudley Sports Company (hereinafter "Dudley") as an unincorporated division of Athlone.

4. Athlone and Dudley are distributors as the term "distributor" is defined in section 3(a)(5) of the CPSA, 15 U.S.C. 2052(a)(5).

5. Respondent Harold J. Miller is the President of Athlone. As such, he controls the acts, practices and policies of the respondent corporation.

6. Respondent Charles H. Gilbert was, at times relevant to the transactions alleged herein, the Vice-President of Athlone and the President of Dudley. As such, he controlled the acts, practices and policies of Athlone and Dudley.

Consumer Products

7. Respondents have been engaged in the distribution in "commerce," as that term is defined in section 3(a)(12) of the CPSA, 15 U.S.C. 2052(a)(12), of automatic baseball pitching machines (hereinafter "pitching machines"), sold under various names including, but not limited to, the "T.C.," the "T.D.," the "Special," the "Champ," the "Blazer," the "Professional," the "Range," and the "Olympia."

8. The pitching machines were manufactured by Advance Machine Company, Inc. through its wholly owned subsidiary, Commercial Mechanisms, Inc., and were distributed almost exclusively by the respondents.

9. The pitching machines were distributed by the respondents for sale or use of consumers in or around a permanent or temporary household or residence, a school, in recreation or otherwise and are therefore "consumer products," as that term is defined in section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1).

10. Respondents sold or distributed approximately 7,500–8,000 pitching machines between the years 1962 and 1975.

11. The pitching machines consist of a metal frame containing a gas or electric motor connected to a pulley system which in turn, is connected to a circular metal hub. The hub and an attached metal pitching arm are mounted on one side of the machine. A baseball basket or cylindrical baseball rack is mounted on the top of the machine. A cable runs from a heavy spring in the bottom rear portion of the machine to the pitching arm hub.

12. The machine motor propels the pulley system which causes the hub and metal pitching arm to rotate slowly in a clockwise manner. As the arm approaches the six o'clock position tension begins to build in the heavy spring and cable. The metal pitching arm continues slowly towards the nine o'clock position where it can pick up a ball at the mouth of the ball rack. As the arm begins to rise towards the twelve o'clock position the tension increases until a critical point is reached at which time the metal pitching arm flies suddenly and swiftly forward and downward.

Defect

13. At times, even though the pitching machine is disconnected from its power source, the spring and cable retain a high degree of tension. Under these conditions, a slight vibration can cause the machine's metal pitching arm to suddenly and unexpectedly pitch swiftly forward and downward.

14. The sudden, unexpected, swift forward and downward motion of the metal pitching arm can result, and has resulted, in severe personal injuries to consumers struck by the metal pitching arm.

15. Until January 1974, the pitching machine did not have a safety guard or shield or any other effective safety device(s) to keep consumers away from the area through which the metal pitching arm travels.

16. The potential for the metal pitching arm of the pitching machine to unexpectedly activate with great force and speed while the pitching machine is disconnected from its power source is a defect which could create a substantial product hazard as that term is defined in section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2).

17. Between the years 1962 and 1975, respondents distributed in commerce approximately 7,500–8,000 pitching machines, described in paragraphs seven through twelve of this Complaint, which contained a defect which could create a substantial product hazard.

Violation

18. By January 1974 and thereafter, respondents knew that numerous severe personal injuries had been caused by the sudden and unexpected activation of the metal arm of a pitching maching which was disconnected from its power source, and that, based on such injuries, numerous claims and product liability lawsuits had been lodged against them and/or their insurance carriers.

19. Therefore, the respondents had obtained information by January 1974 and thereafter which reasonably supported the conclusion that the pitching machines contained a defect which could create a substantial product hazard.

20. The respondents knew of the existence and the authority of the Consumer Product Safety Act prior to January 1974.

21. The respondents, at the time they obtained information which reasonably supported the conclusion that the pitching machines contained a defect which could create a substantial product hazard, were subject to the requirements for notification of defect pursuant to 15 U.S.C. 2064(b) and the Commission's regulations for substantial product hazard notifications then in effect, 16 CFR Part 1115.

22. The respondents failed to inform the Commission by January 1974 or at any time thereafter until July 1977 that they had obtained information which reasonably supported the conclusion that the pitching machines contained a defect which could create a substantial product hazard, as required by section 15(b)(2) of the CPSA, 15 U.S.C. 2064(b)(2).

23. By failing to inform the Commission immediately after they had obtained information which reasonably supported the conclusion that the pitching machines contained a defect which could create a substantial product hazard, respondents knowingly committed a prohibited act under section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

Relief Sought

Wherefore, the staff of the Consumer Product Safety Commission believes that the following relief is in the public interest and requests that the Commission, after affording interested persons an opportunity for a hearing:

1. Determine that respondents had obtained information by January 1974 and thereafter which reasonably supported the conclusion that the pitching machines described in paragraphs seven through twelve of this Complaint contained a defect, which could create a substantial product hazard and which was subject to the reporting requirements of section 15(b)(2) of the CPSA, 15 U.S.C. 2064(b)(2).

2. Determine that respondents knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), by failing to immediately report the existence of the defect described in paragraphs thirteen through seventeen of this Complaint, as required by section 15(b)(2) of the CPSA, 15 U.S.C. 2064(b)(2).

3. Pursuant to section 20(a) of the CPSA, 15 U.S.C. 2069(a), assess a civil penalty in the amount of five hundred thousand dollars ($500,000) jointly and severally against respondents Athlone Industries, Inc., a corporation also doing business as Dudley Sports Company, and Harold J. Miller and Charles H. Gilbert, individually and as officers of Athlone Industries, Inc. for knowingly violating section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), by failing to furnish information as required by section 15(b)(2) of the CPSA, 15 U.S.C. 2064(b)(2), as alleged in this Complaint.

4. Grant such other and further relief as the Commission deems necessary to protect the public health and safety and to implement the CPSA.

Dated: August 5, 1980.

David Schmeltzer,

Associate Executive Director for Compliance and Enforcement.

List and Summary of Documentary Evidence Supporting the Charges

In the Matter of Athlone Industries, Inc., a corporation, also doing business as Dudley Sports Company, and Harold J. Miller and Charles H. Gilbert, individually and as officers of the corporation.

A list and summary of documentary evidence supporting the charges contained in the Complaint issued in this matter is provided herewith pursuant to § 1025.11 of the Commission's Rules of Practice for Adjudicative Proceedings, 45 FR 29216 (May 1, 1980) (to be codified in 16 CFR Part 1025.11). Complaint Counsel reserves the right to offer additional evidence during the course of this proceeding.

1. *CPSC Establishment Inspection Report.*

This report contains the findings obtained by CPSC investigators during the initial inspection of Athlone on June 29, 1977.

2. *Respondents' July 18, 1977 letter to CPSC.*

Respondents' letter of July 18, 1977 provides information pursuant to 16 CFR Part 1115 (Substantial Product Hazard Notifications), responses to questions raised by Commission staff, and a synopsis of claims against respondents for injuries alleged to have been caused by the pitching machines.

3. *CPSC Engineering Report.*

This report contains the CPSC engineering evaluation of a pitching machine distributed by the respondents and obtained by the Commission on July 26, 1977.

4. *Respondens' letter offering to sell arm guard.*

By this letter of July 19, 1974, respondents informed owners of pitching machines that complaints had been received concerning injures to users of the machines and that in order to "avoid any further litigation or complaints," each owner should purchase an am guard at a cost of $45.00, plus freight.

5. *Personal injury claims.*

These documents identify victims and describe personal injuries alleged to have resulted from the defect in respondents' pitching machines. Among the victims and injures are the following:

Name of victim	Description of injury	Date of injury
Lawrence Schmitt	Fractured skull; broken nose; severe facial lacerations	Mar. 24, 1965.
Jerry Williams	Loss of sight in one eye	Mar. 23, 1972.
Ronald Wussow	Fractured Skull	July 3, 1972.
Michael Mankin	Head injuries	Jan. 1, 1973.
Larry Pierce	Fractured skull; permanent cosmetic and possible neural damage.	Mar. 19, 1973.
Lorraine Bryant	Loss of sight in one eye; head injuries	June 29, 1974.
Harvey Berndt	Loss of sight in one eye; facial damage	Feb. 24, 1975.
Gary Campbell	Fractured skull; paralysis	Mar. 14, 1976.
John Roth	Fractured skull; sensory/motor impairment	Mar. 24, 1976.
Terry Lee Holley	Fractured skull, permanent brain damage	July 20, 1976.

6. Correspondence between respondents and the manufacturer of the pitching machines concerning newly enacted Consumer Product Safety Act.

This exchange of correspondence on December 27, 1972 and January 8, 1973 between the respondents and the manufacturer of the pitching machines discusses the then newly enacted Consumer Product Safety Act and the "implications involved" in terms of the safety of the pitching machines.

[FR Doc. 80-27875 Filed 9-8-80; 8:45 am]

BILLING CODE 6355-01-M

Performance Review Board, Senior Executive Service; Appointment of Members

The purpose of this notice is to publish the names of the members of the Performance Review Board at the Consumer Product Safety Commission, effective July 14, 1980. The members are as follows:

Bert Simson, Chair (membership term expires July 1983, term as Chairman expires July 1981); Lowell Dodge (unlimited membership term); Robert

Jenkins (membership term expires July 1982); Robert Knisely (unlimited membership term); Andrew Krulwich/ Margaret Freeston (unlimited membership term); and Joann Langston (membership term expires July 1981).

Dated: September 3, 1980.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 80-27679 Filed 9-8-80; 8:45 am]

BILLING CODE 6355-01-M

[Petition No. CP 78-17]

Petition Concerning Gasoline Cans; Denial of Petition

AGENCY: Consumer Product Safety Commission.

ACTION: Denial of petition.

SUMMARY: The Commission denies a petition requesting it to issue a consumer product safety standard for portable gasoline containers. The Commission is taking this action because currently available data do not indicate that the design or performance of gasoline containers as a class presents an unreasonable risk of injury. In addition, the Commission believes that a mandatory standard is not needed at this time because of an anticipated voluntary standard for gasoline containers.

ADDRESS: Copies of the petition and the staff's briefing materials on the petition may be obtained from the Office of the Secretary, Consumer Product Safety Commission, 1111 18th St., N.W., Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Douglas L. Noble, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207 (301) 492-6453.

SUPPLEMENTARY INFORMATION:

1. Background

Section 10 of the Consumer Product Safety Act (CPSA) provides that any interested person may petition the Consumer Product Safety Commission to commence a proceeding for the issuance of a consumer product safety rule. Section 10 also provides that if the Commission denies such a petition, it shall publish its reasons for denial in the Federal Register.

By letter dated August 7, 1978 Martin Bennett petitioned (CP 78-17) the Commission to ban certain hazardous portable containers for consumer use of gasoline and to establish a standard for gasoline containers. To support his request, the petitioner cited an explosion of an ice cream truck which injured a number of persons and was alleged to be associated with a gasoline container. The petitioner stated that any standard should cover specified characteristics of gasoline containers such as structural integrity, stability, labeling, and provision for containment of an explosion.

The Commission has treated the petition as one requesting a standard for gasoline containers since the petitioner did not identify the specific kinds of containers that should be banned and since a standard requiring that all gasoline containers conform to certain safety specifications would presumably eliminate the need for a ban.

The Commission first considered this petition in September of 1979 and at that time deferred decision on the petition. The Commission instructed the staff to analyze 1979 gasoline-related injury information as soon as it became available, to encourage industry development of a voluntary safety standard for gasoline containers used by consumers, to prepare and disseminate materials on the safe use and storage of gasoline, and to closely monitor future injuries associated with gasoline containers. The Commission also directed the staff to investigate the possibility of revising the recommended labeling for gasoline containers under the Federal Hazardous Substances Act (FHSA) to include specific warnings about the explosive nature of gasoline and the safe storage of gasoline.

2. Commission Decision on the Petition

Based on all available information, including information submitted by the petitioner, information prepared by the staff in September of 1979, and subsequent information gathered by the staff, the Commission has now decided to deny this petition. The reasons for the Commission's decision are discussed below.

The Commission staff estimates that approximately 9700 people were treated in hospital emergency rooms in 1979 for thermal burns associated with gasoline. The staff notes that gasoline-related injuries tend to be quite severe; about 25 percent of the victims were admitted to the hospital for further treatment. In the time period from 1974-1978 (the most recent time period for which data are available), the Commission's death certificate files identify about 120 deaths a year as being associated with the ignition of gasoline.

In order to ascertain the role of "gas cans" (i.e., containers specifically marketed for the storage of gasoline) in these incidents, the Commission staff also reviewed 126 gasoline-related indepth investigations collected in 1978, 1979, and 1980. Containers sold specifically for the purpose of holding gasoline were mentioned in only 16 of the 126 cases (13 percent of the total). The remaining 110 gasoline-related cases reported the involvement of such items as metal cans, glass jars, and pails and buckets or did not report any container as playing a specific role in the accident sequence.

Most of the 16 incidents which mentioned gas cans involved gasoline use around ignition sources, for example, gasoline poured onto fires or into carburetors, or ignition of gasoline in an open container by a remote heat source. The Commission staff is unable to conclude that the design of specific containers contributed substantially to the accident sequence in most of the reported incidents.

Based on the staff analysis of the injury data, the Commission concludes that current information does not indicate that the design or performance of gas cans presents an unreasonable risk of injury. The Commission believes that the majority of accidents occur because of the way gasoline and containers are used around ignition sources. However, since gasoline is a dangerous substance and gasoline-related injuries, whatever the cause, can be extremely serious, the Commission supports the current work to develop voluntary standards regarding gas can construction and labeling. In addition, the Commission recognizes the need to inform consumers about the dangers associated with gasoline and has published materials regarding safe use and storage of gasoline.

The American Society for Testing and Materials (ASTM) F-15 Committee on Consumer Products has begun development of a voluntary standard on portable containers for petroleum products, including performance and labeling requirements. The standard will address the hazards of 1) gasoline leakage from containers during both storage and transfer of gasoline, and 2) vapor leakage from open or closed gasoline containers. If, as anticipated, the ASTM Committee makes recommendations for labeling changes on gasoline containers, the Commission will consider incorporating these changes in its recommended labeling under the FHSA.

The Commission staff will participate in the voluntary development effort. Although the Commission does not believe that the design or performance of gas cans as a class presents an unreasonable risk of injury, Commission engineers, based on evaluation of current gasoline containers, have concluded that performance

requirements for stability, and handle strength, and in particular, requirements concerning leakproof caps, leakproof seams and extension spouts could increase the safety of the current gasoline containers that are sold in the retail market. It is expected that a final standard may be approved by ASTM by December 1981.

In addition, the Commission continues to be concerned that specific models of gas cans may be hazardous because they are unstable or may leak. Any such information including any results of tests performed by Commission engineers, will be investigated by Commission staff for possible action under section 15 of the CPSA.

Dated: September 3, 1980.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 80-27678 Filed 9-8-80; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

Board of Visitors to the U.S. Naval Academy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 1), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet on October 7 and 8, 1980, at the Naval Academy. The sessions, which are open to the public, will commence at 1:00 p.m., October 7, 1980, and at 8:30 a.m., October 8, 1980, in Room 301, Rickover Hall.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy.

The contact officer will be Rear Admiral Robert W. McNitt, USN (Ret.), Secretary to the Board of Visitors, Dean of Admission, U.S. Naval Academy, Annapolis, Md. 21402, (301) 267-2188.

Dated: September 2, 1980.

P. B. Walker,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Administrative Law).

[FR Doc. 80-27704 Filed 9-8-80; 8:45 am]

BILLING CODE 3810-71-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Chief of Naval Operation (CNO) Executive Panel Advisory Committee will meet on October 7-8, 1980, from 9 a.m. to 5 p.m. each day, at 2000 North Beauregard Street, Alexandria, Va. All sessions will be closed to the public.

The entire agenda for the meeting will consist of a review of recent intelligence developments, sub-panels' findings and recommendations on the application of artificial intelligence and other new technologies, and discussions of a global strategy into the 1980s. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in Section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Commander Catherine Z. Becker, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 N. Beauregard Street, Room 392, Alexandria, VA 22311. Phone No. (703) 756-1205.

Dated: September 3, 1980.

P. B. Walker,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Administrative Law).

[FR Doc. 80-27702 Filed 9/8/80; 8:45 am]

BILLING CODE 3810-71-M

Semicoa; Limited Exclusive Patent License Granted

Pursuant to the provisions of Part 746 of Title 32, Code of Federal Regulations (41 FR 55711-55714, December 22, 1976), the Department of the Navy announces that on August 13, 1980, it granted to Semicoa, a corporation of the State of California, a revocable, nonassignable, limited exclusive license for a period of five years under Government-owned United States Patent No. 4,005,282, issued January 25, 1977, entitled "Decometer", inventor, Kirk E. Jennings.

Copies of the patent may be obtained for fifty cents ($0.50) from the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

For further information concerning this notice, contact: Dr. A. C. Williams, Staff Patent Adviser, Office of Naval Research (Code 302), Ballston Tower No. 1, 800 North Quincy Street, Arlington, VA 22217, Telephone No. 202, 696-4005.

Dated: September 3, 1980.

P. B. Walker,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Administrative Law).

[FR Doc. 80-27703 Filed 9-8-80; 8:45 am]

BILLING CODE 3810-71-M

Jet Research Center, Inc.; Limited Exclusive Patent License Granted

Pursuant to the provisions of Part 746 of Title 32, Code of Federal Regulations (41 FR 55711-55714, December 22, 1976), the Department of the Navy announces that on August 12, 1980, it granted to Jet Research Center, Inc., a corporation of the State of Texas, a revocable, nonassignable, limited exclusive license for a period of five years under Government-owned United States Patent No. 3,695,951, issued October 3, 1972, entitled "Pyrotechnic Composition", inventors: Horace H. Helms, Jr. and Alexander G. Rozner.

Copies of the patent may be obtained for fifty cents ($0.50) from the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

For further information concerning this notice, conctact:

Dr. A. C. Williams, Staff Patent Adviser, Office of Naval Research (Code 302), Ballston Tower No. 1, 800 North Quincy Street, Arlington, VA 22217, Telephone No. (202) 696-4005.

Dated: September 2, 1980.

P. B. Walker,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 80-27694 Filed 9-8-80; 8:45 am]

BILLING CODE 3810-71-M

Office of the Secretary

Defense Science Board Task Force on EMP Hardening of Aircraft; Closed Meeting

The Defense Science Board Task Force on EMP Hardening of Aircraft will meet in closed session 30 September-1 October 1980 at the Air Force Weapons Laboratory, Albuquerque, New Mexico.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research and engineering policy and to provide long-range

guidance to the Department of Defense in these areas.

The Task Force will review hardening of U.S. aircraft against EMP and related subjects and will provide recommendations for appropriate actions.

In accordance with 5 U.S.C. App. I 10(d)(1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

September 4, 1980.

[FR Doc. 80-27628 Filed 9-8-80; 8:45 am]

BILLING CODE 3810-70-M

Defense Science Board Task Force on Cruise Missiles; Advisory Committee Meeting

The Defense Science Board Task Force on Cruise Missiles will meet in closed session on October 14 and 15, 1980, at the Defense Nuclear Agency Conference Facility, Marina del Rey, California.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under of Defense for Research and Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

The Task Force will provide an analysis of the major issues concerning advanced cruise missile technology.

In accordance with 5 U.S.C. App. I 10(d)(1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1976), and that accordingly this meeting will be closed to the public.

M S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

September 4, 1980.

[FR Doc. 80-27627 Filed 9-8-80; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF EDUCATION

Bilingual Education—Fellowship Program; Closing Date for Transmittal of Applications

AGENCY: Department of Education.

ACTION: Notice of Closing Date for Transmittal of Applications for Participation in the Fellowship Program.

Applications are invited for participation in the Fellowship Program under the Bilingual Education Act.

Authority for this program is contained in Section 723 of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978 (Pub. L. 95-561).

(20 U.S.C. 3233)

The Secretary approves for participation in the Fellowship Program an institution of higher education that offers a program of study leading to a degree above the master's level in the field of training teachers for bilingual education. The Secretary awards fellowships to individuals nominated by the approved institutions of higher education.

The purpose of the fellowships is to provide financial assistance to full-time graduate students who are preparing to become trainers of teachers for bilingual education.

Closing Date for Transmittal of Applications: An application for participation must be mailed or hand delivered by November 10, 1980.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 13.403K Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program information: An institution of higher education may be approved for participation in the Fellowship Program for a period of from one to five years based on the quality of its bilingual education traning program. The Secretary notifies an approved institution of higher education of the numbers of students by language(s) that it may nominate for fellowship support.

An individual interested in receiving a fellowship must apply directly to approved institutions of higher education. Fellowhips are awarded for only one year at a time. A new application must be filed each year at the institution in which the individual wishes to enroll. A list of participating institutions may be obtained by calling or writing the Office of Bilingual Education and Minority Languages Affairs contact person.

In accordance with the program regulations, individuals who are selected will be required to sign a contract by which they will agree either to work for an equivalent period of time in an activity related to training bilingual education personnel or to repay the assistance received. Additional information on the service requirement is contained in program regulations.

Available Funds: It is expected that approximately $1,700,000 will be available for fellowships at newly approved institutions uner the Fellowship Program in fiscal year 1981.

It is estimated that these funds could support 215 fellowships.

However, these estimates do not bind the Department of Education to a specific number of fellowships unless that number is otherwise specified by statute or regulations.

Application Forms: Application forms and program information packages are available and may be obtained by writing to the Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, (Room 421, Reporters Building), 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information

package. The Secretary strongly urges that the narrative portion of the application not exceed 30 pages in length. The Secretary furthers urgers that applicants not submit information that is not requested.

Applicable Regulations: Regulations applicable to this program include the following:

(1) The regulations governing the Fellowship Program (45 CFR Parts 123 and 123h); and

(2) The regulations contained in 45 CFR 100a.51 and 45 CFR 100c.1–100c.2 of the Education Division General Administrative Regulations (EDGAR).

For Further Information: For further information contact Ms. Paquita Biascoechea, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education (Room 421, Reporters Building), 400 Maryland Avenue, S.W., Washington, D.C. 20202, Telephone (202) 245–2600.

(20 U.S.C. 3233)

(Catalog of Federal Domestic Assistance Program No. 84.003, Bilingual Education)

Dated: August 19, 1980.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 80–27630 Filed 9–8–80; 8:45 am]

BILLING CODE 4000–01–M

Bilingual Education—Fellowship Program; Closing Date for Transmittal of Applications

AGENCY: Department of Education.

ACTION: Notice of Closing Date for Transmittal of Applications for Continuing Participation in the Fellowship Program.

Applications are invited for continuing participation in the Fellowship Program under the Bilingual Education Act.

Authority for this program is contained in Section 723 of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95–561.

(20 U.S.C. 3233)

Eligible applicants are institutions of higher education with programs of study that have been previously approved by the Secretary for a period in excess of one year. The Secretary awards fellowships to individuals nominated by the approved instititions of higher education.

The purpose of this program is to provide continued financial assistance to full-time graduate students who are preparing to become trainers of teachers for bilingual education.

Closing Date for Transmittal of Applications: To be assured of consideration for participation, an application should be mailed or hand delivered by March 2, 1981.

If the application is late, the Department of Education may lack sufficient time to review it with other applications for continuing participation and may decline to accept it.

Applications Delivered by Mail: An application sent by mail should be addressed to the U.S. Department of Education, Application Control Center, Attention: 13.403F, Washington, D.C. 20202.

An applicant should show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Program Information: Each institution applying for continuing participation in the Fellowship Program is asked to submit with its application a ranked list of nominees and alternates for fellowships. The applicant should develop a ranked list of nominees and alternates for each approved language, using the nomination form included in the continuation application package. The Secretary will make final selections from these lists. A nominee who is not initially selected as a recipient may be designated as an alternate and may subsequently be selected if a vacancy becomes available.

An individual interested in receiving a fellowship must apply directly to an approved institution of higher education. A fellowship is awarded for only one year at a time. A new application must be filed each year at the institution in which the individual wishes to enroll. A list of participating institutions may be obtained by calling or writing the Office of Bilingual Education and Minority Languages Affairs contact person.

In accordance with the program regulations, individuals who are selected will be required to sign a contract by which they will agree either to work for an equivalent period of time in an activity related to training bilingual education personnel or to repay the assistance received. Additional information on the service requirement is contained in the program regulations.

Available Funds: It is expected that approximately $2,800,000 will be available for fellowships at continuation institutions under the Fellowship Program in fiscal year 1981.

It is estimated that these funds could support 360 fellowships.

However, these estimates do not bind the Department of Education to a specific number of fellowships unless that number is otherwise specified by statute or regulations.

Application Forms: Application forms and program information packages are available and may be obtained by writing to the Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education (Room 421, Reporters Building), 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package.

Applicable Regulations: Regulations applicable to this program include the following:

(1) The regulations governing the Fellowship Program (45 CFR Parts 123 and 123h); and

(2) The regulations contained in 45 CFR 100a.51 and 45 CFR 100c.1–100c.2 of the Education Division General Administrative Regulations (EDGAR).

Further Information: For further information contact Ms. Paquita Biascoechea, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education (Room 421, Reporters Building), 400 Maryland Avenue, S.W., Washington, D.C. 20202, Telephone (202) 245–2600.

(20 U.S.C. 3233)

(Catalog of Federal Domestic Assistance Program No. 84.003 Bilingual Education)

Dated: August 19, 1980.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 80-27631 Filed 9-8-80; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA DOCKET NO. 80-CERT-030]

Terra Chemicals International, Inc., Application for Recertification of the Use of Natural Gas To Displace Fuel Oil

On October 2, 1979, Terra Chemcials International, Inc. (Terra), P.O. Box 1828, Sioux City, Iowa 51103, was granted a certificate of eligible use of natural gas to displace fuel oil by the Administrator of the Economic Regulatory Administration (ERA) (Docket No. 79-CERT-088). The certification involved the purchase of natural gas from Centennial Gas Corporation, and Yates Drilling Company and Martin Yates III for use by Terra at its Port Neal Plant, Port Neal, Iowa. The ERA certificate expires on October 1, 1980.

On August 22, 1980, Terra filed an application for recertification of an eligible use of natural gas to displace fuel oil at its Port Neal Plant pursuant to 10 CFR 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file with the ERA and available for public inspection at the ERA, Docket Room 7108, 2000 M Street, N.W., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m. Monday through Friday, except Federal holidays.

In its application, Terra states that the volume of natural gas for which it requests recertification is approximately 3,500 Mcf per day. It is estimated that approximately 2,500,000 gallons (59,524 barrels) of No. 2 fuel oil (0.5 percent maximum sulfur) will be displaced per year at the Port Neal Plant.

The eligible seller of the natural gas is Centennial Gas Corporation, c/o Industrial Gas Services, Inc., 4501 Wadsworth Boulevard, Wheat Ridge, Colorado 80033. The gas will be transported by Northern Natural Gas Company, Colorado Interstate Gas Company, Western Slope Gas Company, and Iowa Public Service Company.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 7108, RG-57, 2000 M Street, N.W., Washington, D.C. 20461 Attention: Albert F. Bass, on or before September 18, 1980.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing on or before September 18, 1980. The request should state the person's interest, and if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to Terra and any persons filing comments and will be published in the Federal Register.

Issued in Washington, D.C., on August 29, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 80-27674 Filed 9-8-80; 8:45 a.m.]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER80-422]

Central Vermont Public Service Corp.; Order Accepting Settlement Rates

Issued: September 2, 1980.

On May 30, 1980, Central Vermont Public Service Corporation (Central Vermont) filed proposed revisions to its FERC Electric Tariff Original Volume No. 1, R-7 and R-7A. The proposed rates would have resulted in increased revenues of approximately $833,469 (11.1%) for firm power service to six non-affiliated wholesale customers[1] and one affiliated wholesale customer.[2] Central Vermont proposed an effective date of August 1, 1980. On July 8, 1980, Central Vermont submitted an executed settlement agreement between Central Vermont and each of its wholesale customers affected by the rates filed in this docket, together with settlement rate schedules and motion for approval of the settlement, agreement. The settlement rates[3] would result in an increase of approximately $685,617 (9.1%) which is $152,962 less than the original request.

In its motion, Central Vermont requested waiver of our notice requirements and an effective date of August 1, 1980, for the proposed settlement rates. Central Vermont represented that all of the affected wholesale customers have joined in the request for an August 1, 1980 effective date. By order issued on July 31, 1980, in this docket we accepted for filing and suspended the originally filed R-7 and R-7A rates and allowed the settlement rates, R-8 and R-8A, to become effective August 2, 1980, on an interim basis pending final action by the Commission on the settlement proposal.

On July 28, 1980, the Town of Springfield, Vermont (Springfield) filed a response in partial opposition to Central Vermont's motion for approval of the settlement agreement.[4] Springfield stated that it does not oppose the proposed settlement rates. However, it does object to an availability clause contained in the proposed R-8 and R-8A tariffs which limits service under those tariffs to customers existing "as of the effective date [of the tariff]."[5]

Discussion

In an order considered by the Commission concurrently with this one,[6] we have established a mechanism for inquiring further into questions concerning the availability clauses in Central Vermont's R-6, R-8 and R-8A tariffs. Springfield, the complainant in that proceeding, will have full opportunity, if necessary, to present its position with respect to the availability clause in that proceeding. Accordingly, questions concerning the availability clause should not pose an obstacle to acceptance of the present settlement agreement.

We find that good cause exists to grant waiver of the notice requirement

[1] Allied Power & Light Company, New Hampshire Electric Cooperative, Inc., Rochester Electric Light & Power Company, Village of Hyde Park Water & Light Department, Village of Johnson Water and Light Department, Woodsville Fire District Water & Light Department.

[2] Connecticut Valley Electric Company, Inc.

[3] *See* Attachment A for rate schedule designations.

[4] Our order of July 31, 1980, permitted Springfield to intervene in this proceeding.

[5] This clause, which is identical to an availability clause contained in Central Vermont's R-6 tariff, provides:

"1. *Availability.*

Electric service hereunder is available to any organization functioning as an electric utility, *as of the effective date hereof,* under the jurisdiction of the appropriate federal/state electric utility regulatory body, for its own use and for resale to its ultimate customers, or to other utilities upon specific agreement of the Company and Customer, as existing delivery points and at such other points on the Company's power supply system, as mutually agreed upon, where there are facilities of adequate type and capacity." (Emphasis added).

[6] *Town of Springfield* v. *Central Vermont Public Service Co.*, Docket No. EL80-5.

of section 35.3 of our regulations since all affected customers have agreed to an August 1, 1980 effective date. Moreover, we find that acceptance of the proposed settlement rates is in the public interest. Therefore, we shall accept the proposed settlement rates without suspension to become effective as of August 1, 1980.

Central Vermont Public Service Corporation, ER80-422, Settlement Rates

Designation	Description
Sixth Revised Sheet No. 2 to FPC Electric Tariff First Revised Volume No. 1. (Supersedes Fifth Revised Sheet No. 2).	Revised Table of Contents.
Sixth Revised Sheet No. 14 to FPC Electric Tariff First Revised Volume No. 1. (Supersedes Fifth Revised Sheet No. 14).	Revised Rate Schedule for R-8 and R-8A Rates.
Seventh Revised Sheet No. 15 to FPC Electric Tariff First Revised Volume No. 1. (Supersedes Sixth Revised Sheet No. 15).	Revised Rate Schedule for R-8 and R-8A Rates.
Seventh Revised Sheet No. 16 to FPC Electric Tariff First Revised Volume No. 1. (Supersedes Sixth Revised Sheet No. 16).	Revised Rate Schedule for R-8 and R-8A Rates.
Sixth Revised Sheet No. 17 to FPC Electric Tariff First Revised Volume No. 1. (Supersedes Fifth Revised Sheet No. 17).	Revised Rate Schedule for R-8 and R-8A Rates.
Sixth Revised Sheet No. 18 to FPC Electric Tariff First Revised Volume No. 1. (Supersedes Fifth Revised Sheet No. 18).	General Terms and Conditions for Resale Service.

Central Vermont's proposed fuel adjustment clause does not comply with section 35.14(a)(6) of the Commission's regulations in that Central Vermont proposes to recover all expenses debited to Accounts 501 and 547 through the fuel clause in addition to those fuel costs recorded in Account 151. Therefore, we shall require Central Vermont to file within 30 days a revised fuel adjustment clause which includes as the cost of fossil fuel only those items recorded in Account 151. In the event that such clause conforms to the Commission's regulations, it shall become effective from the August 1, 1980 effective date of the settlement rates.

The Commission orders: (A) The notice requirements of Section 35.3 of the Commission's regulations are hereby waived.

(B) Central Vermont's proposed R-8 and R-8A settlement rates submitted on July 8, 1980, are hereby accepted for filing to become effective as of August 1, 1980.

(C) Within thirty (30) days from the issuance of this order, Central Vermont shall file a revised fuel adjustment clause that conforms to section 35.14 of the Commission's regulations. Such clause shall become effective as of August 1, 1980, provided that it complies with the regulations.

(D) The Commission's approval of this settlement shall not constitute approval of or precedent regarding any principle or issue in this proceeding or any other proceeding now pending or hereinafter instituted by or against any of the parties to this proceeding.

(E) Upon satisfactory compliance with the filing requirement imposed by paragraph (C) above, this docket will be terminated.

(F) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27545 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-706]

Central Vermont Public Service Corp.; Notice of Proposed Tariff Change

September 2, 1980.

The filing Company submits the following:

Take notice that Central Vermont Public Service Corporation (Company) on August 27, 1980 tendered for filing proposed changes in its FERC Electric Service Rate No. 97. The proposed changes would decrease revenues from jurisdictional sales and services by $4,701 for the 12 month period ending October 31, 1980.

The change is proposed in accordance with the provisions of Article III of the Company's transmission service agreement with the Village of Ludlow Electric Light Department which provides that charges will be updated annually to incorporate the Company's cost experience for the preceding calendar year.

Copies of the filing were served upon the Village of Ludlow Electric Light Department and the Vermont Public Service Board.

Any person desiring to be heard or to protest said application shall file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 22, 1980. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27583 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-701]

Central Vermont Public Service Corp.; Notice of Proposed Tariff Change

September 2, 1980.

The filing Company submits the following:

Take notice that Central Vermont Public Service Corporation (Compnay) on August 27, 1980, tendered for filing a proposed change in its FERC Electric Service Rate No. 88. The proposed change would increase revenues from jurisdictional sales and service by $67,236 for the 12 month period ending October 30, 1980.

The change is proposed in accordance with Article V of the Company's agreement with Vermont Electric Cooperative, Inc. which provides that charges under the agreement will be updated annually to incorporate the Company's purchased power cost experience for the preceding 12 months ending April and the Company's capacity cost associated with company-owned generating facilities for the preceding calendar year.

Copies of the filing were served upon the Vermont Electric Cooperative, Inc. and the Vermont Public Service Board.

Any person desiring to be heard or to protest said application shall file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 22, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27561 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-703]

Central Vermont Public Service Corp.; Notice of Proposed Tariff Change

September 2, 1980.

The filing Company submits the following:

Take notice that Central Vermont Public Service Corporation (Company) on August 27, 1980, tendered for filing a proposed change in its FERC Electric Service Rate No. 96. The proposed change would increase revenues from jurisdictional sales and service by $21,252 for the 12 month period ending October 31, 1980.

The change is proposed in accordance with Article V of the Company's agreement with the Village of Ludlow Electric Light Department which provides that charges under the agreement will be updated annually to incorporate the Company's purchased power cost experience for the preceding 12 months ending April and the Company's capacity cost associated with company-owned generating facilities for the preceding calendar year.

Copies of the filing were served upon the Village of Ludlow Electric Light Department and the Vermont Public Service Board.

Any person desiring to be heard or to protest said application shall file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 22, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27565 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-704]

Central Vermont Public Service Corp.; Notice of Proposed Tariff Change

September 2, 1980.

The filing Company submits the following:

Take notice that Central Vermont Public Service Corporation (Company) on August 27, 1980 tendered for filing proposed changes in its FERC Electric Service Rate No. 89. The proposed changes would decrease revenues from jurisdictional sales and service by $11,411 for the 12 month period ending October 31, 1980.

The change is proposed in accordance with the provisions of Article III of the Company's transmission service agreeement with the Vermont Electric Cooperative, Inc. which provides that charges will be updated annually to incorporate the Company's cost experience for the preceding calendar year.

Copies of the filing were served upon the Vermont Electric Cooperative, Inc. and the Vermont Public Service Board.

Any person desiring to be heard or to protest said application shall file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 1.8 and 1.10 of the Commission's rules of pratice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 22, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27566 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-705]

Central Vermont Public Service Corp.; Notice of Proposed Tariff Change

September 2, 1980.

The filing Company submits the following:

Take notice that Central Vermont Public Service Corporation (Company) on August 27, 1980, tendered for filing proposed changes in its FERC Electric Service Rate No. 93. The proposed changes would decrease revenues from jurisdictional sales and service by $1,982 for the 12 month period ending October 31, 1980.

The change is proposed in accordance with the provisions of Article III of the Company's transmission service agreement with Lyndonville Electric Department which provides that charges will be updated annually to incorporate the Company's cost experience for the preceding calendar year.

Copies of the filing were served upon the Lyndonville Electric Department and the Vermont Public Service Board.

Any person desiring to be heard or to protest said application shall file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 22, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27567 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3210]

City of Gold Hill and Western States & Resources, Inc. of Oregon; Notice of Application for Preliminary Permit

September 3, 1980.

Take notice that City of Gold Hill and, Western States Energy & Resources, Inc., of Oregon (Applicant) filed on June 11, 1980, a joint application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3210 to be known as Gold Hill and Gold Ray Water Power Project located on the Rogue River in Jackson County, Oregon. Correspondence with the Applicant should be directed to: Mr. Jeffrey Kossack, Western States Energy & Resources, Inc., 200 S. W. Alder, Portland, Oregon 97201.

Project Description—The proposed project would consist of two run-of-the river developments, approximately 6 miles apart on the Rogue River, with total rated capacity of 10,870 kW—(1) the existing Gold Hill Development which comprises an intake structure within the river, a 2,400-foot long canal and a concrete powerhouse containing two existing inoperable generating units with installed capacity of 2,500 kW (a third unit with rated capacity of 1,500 kW is proposed to be added to the powerhouse); and (2) the Gold Ray Development (upstream of the Gold Hill Development) which comprises the existing Gold Ray Reservoir with a gross storage capacity of 100 acre-feet at elevation 1,146 feet (mean sea level), the

existing 36-foot high, 374-foot long Gold Ray concrete gravity dam, a proposed concrete powerhouse containing two generating units with total rated capacity of 6,870 kW, and a transmission line connecting the two developments to the Pacific Power and Light Company's (PP&L) existing 69-kV transmission line, approximately 300 feet downstream of the Gold Ray Dam.

Purpose of Project—Project energy would be sold to PP&L or another utility.

Proposed Scope and Cost of Studies Under Permit—Applicant has requested a 36-month permit to prepare a project report including preliminary designs, results of hydrological, environmental and economic feasibility studies. The cost of the above activities along with preparation of an environmental impact report, obtaining agreements with Federal, State, and local agencies, preparing a license application, conducting final field surveys and preparing designs is estimated by the Applicant to be $102,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before November 10, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than January 9, 1981. A notice of intent must conform with the requirements of 18 C.F.R. § 4.33(b) and (c), *as amended 44 Fed. Reg.* 61328, (October 25, 1979). A competing application must conform with the requirements of 18 C.F.R. § 4.33(a) and (d), *as amended*, 44 *Fed. Reg.* 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before November 10, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27573 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Dockets Nos. TA80-2-21 (PGA80-4) (IPR80-3), (LFUT80-2) (TT80-2) and (AP80-2)]

Columbia Gas Transmission Corp.; Order Accepting for Filing and Suspending Proposed Tariff Sheets Subject to Refund and Subject to Conditions and Setting Issue for Hearing

Issued August 29, 1980.

On July 31, 1980, Columbia Gas Transmission Corporation (Columbia) filed revised tariff sheets [1] reflecting increased purchased gas costs together with a surcharge adjustment increase; reduced Louisiana First Use Tax adjustment and surcharge adjustment; a transportation costs tracker decrease filed pursuant to Article XI of the Stipulation and Agreement in Docket No. RP78-19, et al.; and an Advance Payment adjustment reduction filed pursuant to Article IX of the Stipulation and Agreement in Docket No. RP76-94, et al. The proposed effective date is September 1, 1980.

The filing provides for the recovery of $103,324,665 in additional purchased gas costs, based on the six month period ending February 28, 1981. Columbia's buyers who supply nonexempt industrial boiler fuel facilities have reported no projected Maximum Surcharge Absorption Capability (MSAC) amounts for the PGA period. Consequently, Columbia has effected no reduction to its total gas acquisition costs for MSACs. The commodity surcharge adjustment provides for the return of a deferred purchased gas balance of $5,821,261 as of June 30, 1980, over the six month period September 1, 1980 through February 28, 1981.

Columbia's filing contains $14,637,784 in LNG purchased gas costs, which is based upon a full six-month cost of service of $21,971,090, less adjustments of $7,333,306 which reflects a four-month "minimum bill" period. LNG's tariff provides that may flow-through its total cost of service less related return on equity and associated taxes when specified circumstances arise, causing deliveries to cease. Columbia has estimated that current deliveries will cease on November 1, 1980, resulting in the two months of full costs and four months of adjusted costs as reflected in this filing.

Two complaints have been filed to date regarding Columbia's LNG purchased gas costs. The People's Counsel of Maryland filed its complaint on July 18 in Docket No. TA80-2-21 (PGA80-3), alleging Columbia's failure to invoke the minimum bill provision contained in the tariff of its LNG supplier, Columbia LNG Corporation, and further alleging overpayment by Columbia's customers in an amount exceeding $2.35 million due to Columbia's failure in this regard. The Attorney General of Ohio filed a complaint in Docket No. RP80-129 on August 4, 1980 regarding the trafiff provisions and purchased gas costs of Columbia Gas Transmission Corporation, Columbia LNG Corporation and two other companies, Consolidated Gas and Consolidated LNG Company. The merits of this complaint, as well as any responses, will be addressed in a future Commission order in that docket.

Based upon the complaints outstanding against Columbia and the issues raised thereby, the Commission intends to set for hearing the issue of the proper amount to be reflected in Columbia's rates for purchases from Columbia LNG. *See* Order Instituting Investigation, Docket Nos. TA80-2-21 and TA80-2-22. Consequently, as set forth more fully in that order, the LNG

[1] Sixty-Second Revised Sheet No. 16, Tenth Revised Sheet No. 16A, Fifteenth Revised Sheet No. 64 and Third Revised Sheet Nos. 64E through 64I to FERC Gas Tariff, Original Volume No. 1.

purchased gas costs shall be collected subject to refund pending the outcome of the Commission's investigation in those dockets.

Based upon a review of Columbia's filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept Columbia's filing, grant waiver of the 30-day notice requirements and suspend the effectiveness such that it shall become effective on September 1, 1980, subject to refund and subject to the conditions described below.

A recent decision of the Court of Appeals for the District of Columbia Circuit has led the Commission to reassess the standards that it uses to fix the appropriate duration of a suspension period as we may impose with respect to rate increase filings.[2] We have done this as a predicate to our acting on this matter.

Though the regulatory schemes that the Commission administers involve a subtle and a difficult balancing of producer and transporter interests with consumer and shipper interests, their primary purpose is to protect the consumer and shipper against excessive rates and charges. Hence, it is our view that the discretionary power to suspend should be exercised in a way that maximizes this protection.

The decision to suspend a proposed rate increase rests on the preliminary finding that there is good cause to believe that the increase may be excessive or that it may run afoul of other statutory standards. The governing statutes say that *"any* [emphasis added] rate or charge that is not just and reasonable is hereby . . . declared unlawful."[3] This declaration places on the Commission a general obligation to minimize the incidence of such illegality.

Based on the foregoing, the Commission has determined that, in the exercise of its rate suspension authority, rate filings should normally be suspended and the *status quo ante* preserved for the maximum period permitted by statute in circumstances where preliminary study leads the Commission to believe that there is sustantial question as to whether a filing complies with applicable statutory standards.

Particular circumstances may warrant shorter suspensions. Situations present themselves from time to time in which rigid adherence to the general policy of preserving the *status quo ante* for the maximum statutory period makes for harsh and inequitable results. Such circumstances are presented here. When the rate change filed is pursuant to Commission authorized tracking authority it is precisely the type of circumstance which justifies a shortened suspension period. Accordingly, we believe we should exercise our discretion to suspend the rate, but permit the rate to take effect September 1, 1980, subject to refund.

Columbia's filing includes increases pursuant to area rate clauses in the contracts between Columbia and its producers. The Commission's acceptance of this filing shall not constitute a determination that any or all of the area rate clauses permit NGPA prices. That determination shall be made in accordance with the procedures prescribed in Order 23, as amended by subsequent orders, in Docket No. RM79-22. Should it be ultimately determined that a producer is not entitled to an NGPA price under an area rate clause, the refunds made by the producer to the pipeline shall be flowed through to ratepayers in accordance with the procedures prescribed in the pipeline's PGA clause.

Columbia's filing also reflects increases due to costs associated with purchases from affiliated production priced at NGPA levels. The Commission is unable to determine from the information submitted herein whether the proposed purchase price assigned to its affiliate production priced at NGPA levels satisfies the affiliated entities limitation set forth in section 601(b)(1)(E) of NGPA. That section provides that in the case of any first sale between any interstate pipeline and any affiliate of such pipeline, any amount paid in a first sale shall be deemed just and reasonable, if, in addition to not exceeding the maximum lawful price ceiling, such amount does not exceed the amount paid in comparable first sale transactions between persons not affiliated with such pipeline. Accordingly, the Commission's acceptance of this increase is conditioned upon Columbia filing within thirty days data demonstrating that its purchases from affiliates meet the affiliated entities test, upon Commission review of that data.

The Commission Orders:

(A) Columbia Gas Transmission Corporation's proposed Sixty-Second Revised Sheet No. 16, Tenth Revised Sheet No. 16A, Fifteenth Revised Sheet No. 64 and Second Revised Sheet Nos. 64E through64I, to FERC Gas Trafiff, Original Volume No. 1 are accepted for filing and suspended, and waiver of notice requirements is granted such that the filing shall become effective September 1, 1980, subject to refund, and subject to the conditions enumerated in the body of this order and the ordering paragraphs below.

(B) Columbia shall file data within 30 days of the issuance of this order to show that the pricing of gas purchased from its affiliates is in accordance with section 601(b)(1)(E) of NGPA.

(C) The costs associated with Columbia's purchase from its producer affiliates shall be collected subject to refund and subject to: (1) Columbia filing within 30 days of the issuance of this order the data required in Paragraph (B) above; and (2) review of such data by the Commission to determine what further action is appropriate.

(D) The Costs attributable to purchases from Columbia LNG shall be collected subject to refund pending the outcome of the investigation ordered in Docket No. TA80-2-21 and TA80-2-22.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27548 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Dockets Nos. TA80-2-21 (PGA80-3); TA80-2-22 (PGA80-50) (IPR80-3) (LFUT80-2) and (RD&D80-2); and RP80-136]

Columbia Gas Transmission Corp. et al.; Order Establishing Investigation and Hearing and Consolidating Proceeding

Issued August 29, 1980.

On July 18, 1980, the People's Counsel of Maryland (People's Counsel) filed a complaint in Docket No. TA80-2-21 (PGA80-3) alleging the unlawful collection of approximately $2.35 million in costs and charges by Columbia Gas Transmission Corporation (Columbia). The People's Counsel bases this claim upon the failure of Columbia to invoke the "minimum bill" provision of its service agreement with Columbia LNG Corporation (Columbia LNG), its affiliate.

The minimum bill provision is to be invoked when deliveries of LNG cease under specified circumstances. In its Answer to the complaint, filed by Columbia on August 4, 1980, the company responded that these specified circumstances were not present, and therefore warranted no action to invoke the minimum bill provision.

Violations of Sections 4, 5, 7 and 9 of the Natural Gas Act (Act) are alleged by

[2] *Connecticut Light and Power Company* v. *Federal Energy Regulatory Commission*, — F. 2d — (D.C. Cir. May 30, 1980).

[3] Section 205(a) of the Federal Power Act, Section 4(e) of the Natural Gas Act, and Section 15 of the Interstate Commerce Act.

the People's Counsel, who states that "[n]o measurable or significant quantity of regasified LNG has been delivered by Columbia LNG to Columbia since at least early May, and possibly earlier." The subject LNG is supplied by Sonatrach, the state owned and operated national oil and gas company of Algeria. Shipments of this LNG to the United States were suspended earlier this year and have not resumed. The resumption of LNG supplies and the price to be paid for LNG from Algeria is the subject of on-going negotiations between the governments of the United States and Algeria. The issue is unresolved to date.

While the complaint filed by the People's Counsel does not address the activities of Consolidated Gas Supply Corporation (Consolidated) and its pipeline affiliate, Consolidated LNG Company (CLNG), the Commission notes the commonality of facts and legal issues between Columbia's and Consolidated's treatment of LNG purchases gas costs. Specifically, Consolidated is co-owner with Columbia of the facility used by both to import and regasify LNG. Further, both companies have virtually similar tariffs regarding the billing for deliveries of LNG. Accordingly, the Commission funds it appropriate to consolidate these two proceedings for the purpose of examining the tariff terms to determine the proper amounts to be reflected in Columbia's and Consolidated's rates for purchases from respective affiliates, Columbia LNG and CLNG.

Based upon the allegations contained in the People's Counsel complaint and the importance of the issues raised therein, and given the commonality of issues between Consolidated's and Columbia's treatment of LNG purchased gas costs, the Commission finds that an investigation under Sections 4 and 14 of the Natural Gas Act into the proper interpretation of the LNG tariffs of those companies is warranted.

On August 27, 1980, the Public Service Commission of the State of New York filed a Notice of Intervention and Protest in the two dockets. PSCNY requests the relief ordered above—institution of an investigation into the minimum bill provisions of the LNG tariffs of the two companies. Further, PSCNY requests the results ordered in the separate orders issued in the PGA dockets, suspension of the PGA filings.

The Commission finds that the People's Counsel, and PSCNY, have demonstrated interests in this proceeding warranting their intervention. Accordingly, we shall grant these requests to intervene.

On our motion, the Commission will also investigate, as part of this docket, the activities of Southern Natural Gas Company (Southern) and its affiliate, Southern Energy Corporation, regarding the minimum bill provision of its tariff governing LNG supplies. Inclusion of Southern in this proceeding is appropriate because Southern has the same basic minimum bill provision and Section 7 certificate as Columbia and Consolidated, and faces similar reduction in receipt of Algerian LNG.

The Commission Orders:

(A) Pursuant to the authority of Sections 4 and 14 of the Natural Gas Act, and the Commission's rules and regulations, joint investigation shall be initiated to determine whether and to what extent the Act has been violated by (1) Columbia Gas Transmission Corporation, and its affiliate, Columbia LNG Corporation, by (2) Consolidated Gas Supply Corporation and its affiliate, Consolidated LNG Company, and (3) Southern Natural Gas Company, and its affiliate, Southern Energy Corporation.

(B) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (18 CFR 3.5(d)), shall convene a conference in this proceeding to be held at a time and conference room at the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, as he deems appropriate. The Presiding Administrative Law Judge is authorized to establish such procedural dates as may be necessary, and to rule upon all motions (except motions to consolidate, sever, or dismiss), as provided for in the rules of practice and procedure.

(C) For purposes of investigation, hearing, and decision, the issues related to LNG purchased gas costs presented in the above-referenced dockets, and in the circumstances relevant to Southern Natural Gas Company, shall be consolidated into a single proceeding.

(D) The Public Service Commission of the State of New York. and the People's Counsel of Maryland, are permitted to intervene in this proceeding subject to the rules and regulations of the Commission; *provided, however,* that the participation of the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in their petitions to intervene; and *provided, further,* that the admission of such intervenors shall not be construed as recognition that they might be aggrieved by any order entered in this proceeding.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27347 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-698]

Consolidated Edison Co. of New New York, Inc.; Notice of Filing

September 2, 1980.

The filing Company submits the following:

Take notice that Consolidated Edison Company of New York, Inc. (Con Edison) on August 26, 1980, tendered for filing as a rate schedule an executed agreement dated August 4, 1980 between Con Edison and the companies of the Northeast Utilities system (The Connecticut Light and Power Company, The Hartford Electric Light Company, and Western Massachusetts Electric Company, hereinafter collectively called NU). The proposed rate schedule provides for the interruptible transmission of power and energy by Con Edison.

The rate schedule provides for a transmission charge of 2.0 mills per kilowatthour for the energy transmitted each hour.

Con Edison requests waiver of the notice requirements of Section 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective August 20, 1980 in accordance with the anticipated utilization by the parties.

Con Edison states that a copy of its filing was served on NU.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 22, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27368 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-510]

Consolidated System LNG Co.; Notice of Application

September 2, 1980.

Take notice that on August 20, 1980, Consolidated System LNG Company (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP80-510 an application pursuant to Section 7(c) of the Natural Gas Act and Section 284.221 of the Commission's Regulations under the Natural Gas Policy Act of 1978 (NGPA) for a certificate of public convenience and necessity for blanket authorization to transport natural gas for other interstate pipeline companies, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests blanket authorization to transport gas for other interstate pipeline companies for periods of up to two years. It states that it would comply with Section 284.221(d) of the Commission's Regulations under the NGPA.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 18, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-27569 Filed 9-8-80; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. ER80-492]

Idaho Power Co.; Order Accepting for Filing and Suspending Proposed Rate Increase, Granting Intervention, and Establishing Hearing Procedures

Issued August 29, 1980.

On June 27, 1980, Idaho Power Company (Idaho) submitted for filing a proposed rate increase to one of its wholesale customers, CP National Corporation (CP National).[1] Based on a calendar 1980 test year, the proposed rates would produce additional revenues of approximately $5,967,135 (89%).[2] Idaho requests that the rates be made effective on September 1, 1980.

Notice of Idaho's filing was issued on July 2, 1980, with responses due on or before July 25, 1980. Timely notices of intervention were filed by the Idaho Public Utility Commission on July 16, 1980, and by the Public Utility Commissioner of Oregon on July 22, 1980. Neither notice raised any substantive issues with regard to Idaho's submittal.

On July 25, 1980, CP National filed a petition to intervene and requested that the proposed rates be suspended for five months and set for investigation. CP National alleges that the rates may be unjust and unreasonable but does not identify any specific objections to Idaho's submittals.

Discussion

We feel that participation in this proceeding by CP National may be in the public interest. Therefore, we shall grant the petition to intervene. The timely-filed notices of intervention submitted by the Idaho Public Utility Commission and the Public Utility Commissioner of Oregon are sufficient to initiate their participation as intervenors.

Our preliminary analysis indicates that Idaho's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful.[3] Accordingly, we shall accept the proposed rates for filing and suspend them as ordered below.

A recent decision of the Court of Appeals for the District of Columbia Circuit has led the Commission to reassess the standards that it uses to fix the appropriate duration of a suspension period as we may impose with respect to rate increase filings.[4] We have done this as a predicate to our acting on this matter.

Though the regulatory schemes that the Commission administers involve a subtle and a difficult balancing of producer and consumer interests, their primary purpose is to protect the consumer against excessive rates and charges. Hence, it is our view that the discretionary power to suspend should be exercised in a way that maximizes this protection.

The decision to suspend a proposed rate increase rests on the preliminary finding that the increase may be unjust and unreasonable or that it may run afoul of other statutory standards. The governing statutues say that "*any* [emphasis added] rate or charge that is not just and reasonable is hereby . . . declared unlawful."[5] This declaration places on the Commission a general obligation to minimize the incidence of such illegality.

Based on the foregoing, the Commission has determined that, in the exercise of its rate suspension authority, rate filings should normally be suspended and the *status quo ante* preserved for the maximum period permitted by statute in circumstances where preliminary study leads the Commission to believe that there is substantial question as to whether a filing complies with applicable statutory standards. Such circumstances are presented here. The Commission is unable to conclude on the basis of the filings before it that Idaho's tendered rates are just and reasonable, and believes that the rates may be unjust

[1] See Attachment A for rate schedule designations.

[2] CP National is a public utility providing service in California, Oregon, Nevada, Utah and Arizona. It sells electric capacity and energy at retail in Eastern Oregon and in Elko, Nevada. It purchases all the capacity and energy for these sales from Idaho Power. The proposed rate changes would increase the rates for CP National's Eastern Oregon operations by $5,228,218 (92%) and the rates for the Elko operations by $678, 917 (72%).

[3] Idaho has allocated demand related costs using the demands coincident with the 12 monthly system peaks for the year 1980. While we now do not express an opinion as to the reasonableness of the 12-CP method in this case, we note that the method differs from that found to be appropriate in an earlier Idaho rate case. *See* Opinion No. 13, issued May 4, 1978, in Docket Nos. ER76-469 and ER76-509 (3-CP method).

[4] *Connecticut Light and Power Company* v. *F.E.R.C.*, ——— F.2d ——— (D.C. Cir. May 30, 1980).

[5] Section 205(a) of the Federal Power Act, Section 4(e) of the Natural Gas Act, and Section 15 of the Interstate Commerce Act.

and unreasonable. Accordingly, we shall suspend the rates for a period of five months permitting the rates to take effect subject to refund thereafter on February 1, 1981.

Particular circumstances may warrant shorter suspensions. Situations present themselves from time to time in which rigid adherence to the general policy of preserving the *status quo ante* for the maximum statutory period makes for harsh and inequitable results. No such showing has been made here.

The Commission orders:

(A) The rate changes submitted by Idaho in this docket are hereby accepted for filing and suspended for five months from the proposed effective date to become effective February 1, 1981, subject to refund.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Act and by the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held to determine the justness and reasonableness of the proposed rates.

(C) CP National is hereby permitted to intervene in this proceeding; *Provided, however,* that its participation shall be limited to the allegations as set forth in its petition to intervene and *provided, further,* that the admission of CP National shall not be construed as recognition by the Commission that it might be aggrieved because of any order or orders entered by the Commission in this proceeding.

(D) The Commission staff shall serve top sheets in this proceeding on or before November 3, 1980.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge shall convene a conference in this proceeding to be held within ten (10) days service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding administrative law judge is authorized to establish all procedural dates and to rule on all motions (except motions to consolidate and sever and motions to dismiss), as provided for in the Commission's rules of Practice and Procedure.

(F) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.
Kenneth F. Plumb,
Secretary.

Idaho Power Co., Docket No. ER80-492, Rate Schedule Designations

Designations and Other Party

(1) Supplement No. 5 to Rate Schedule FPC No. 57 (supersedes supplement No. 4 to Rate Schedule FPC No. 57)—CP National—Oregon
(2) Supplement No. 4 to supplement No. 1 to Rate Schedule FPC No. 30 (Supersedes Supplement No. 3 to Supplement No. 1 to Rate Schedule FPC No. 30)—CP National—Nevada

[FR Doc. 80-27548 Filed 9-8-80; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. ER76-716]

Indiana & Michigan Electric Co.; Notice of Determination by the Designated Commissioner

Issued August 29, 1980.

Take notice that Chairman Curtis, the designated Commissioner pursuant to § 1.28 of the Commission's rules of practice and procedure, determined that no extraordinary circumstances had been demonstrated by Indiana & Michigan Electric Company (I&M) warranting referral to the full Commission of I&M's August 25, 1980, appeal from rulings of the presiding officer in the above-captioned proceeding. The matter was, therefore, not referred to the Commission and the contested rulings of the presiding officer shall not be reviewable by the Commission prior to the time the Commission considers the proceeding with respect to which the rulings were rendered.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-27570 Filed 9-8-80; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. ER80-495]

Iowa Public Service Co.; Order Accepting for Filing and Suspending Proposed Increase in Rates, Granting Intervention, Initiating Hearing, and Establishing Procedures

Issued August 29, 1980.

On June 30, 1980, Iowa Public Service Company (IPS) submitted for filing a proposed increase in rates [1] to its fourteen wholesale customers (Customers).[2] IPS proposes an increase in annual revenues of approximately $649,000 (16.2%) based on the twelfth month period ending December 31, 1979 (Period I). IPS indicates in its transmittal letter that it held pre-filing conferences with the Customers on May 21 and June 11, 1980, and that the Customers support the submittal. IPS requests that its effective date be deferred until September 1, 1980, in lieu of August 29, 1980 (sixty days after filing) to accommodate the Customers.

Notice of the filing was issued on July 8, 1980, with comments, protests and petitions to intervene due on or before July 25, 1980. On July 29, 1980, the Customers petitioned to intervene. The Customers state that they do not request a formal hearing, that they support IPS' submittal, and that the proposed increase should be approved as requested.

Discussion

Initially, we find that participation by Customers in this proceeding may be in the public interest and that good cause exists to grant their untimely petition to intervene. Therefore, we shall permit them to intervene in this docket.

Despite the acquiescence of the Customers to the instant rate increase proposal, our analysis indictes that IPS' proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing, suspend them as ordered below, and establish hearing procedures.

A recent decision of the Court of Appeals for the District of Columbia Circuit has led the Commission to reassess the standards that it uses to fix the appropriate duration of a suspension period as we may impose with respect to rate increase filings.[3] We have done this as a predicate to our acting on this matter.

Though the regulatory schemes that the Commission administers involve a subtle and a difficult balancing of producer and consumer interests, their primary purpose is to protect the consumer against excessive rates and charges. Hence, it is our view that the discretionary power to suspend should be exercised in a way that maximizes this protection.

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[1] See Attachment A for rate schedule designations.

[2] Lincoln Light and Power Company and the Iowa Cities of Aplington, Auburn, Breda, Denver, Estherville, Fonda, Hudson, Lakeview, Livermore, Pocahontas, Rockford, Sergent Bluff, and Wall Lake.

[3] *Connecticut Light and Power Company* v. *Federal Energy Regulatory Commission*, ——— F. 2d ——— (D.C. Cir. May 30, 1980).

The decision to suspend a proposed rate increase rests on the preliminary finding that the increase may be unjust and unreasonable or that it may run afoul of other statutory standards. The governing statutes say that "*any* [emphasis added] rate or chage that is not just and reasonable is hereby . . . declared unlawful." [4] This declaration places on the Commission a general obligation to minimize the incidence of such illegality.

Based on the foregoing, the Commission has determined that, in the exercise of its rate suspension authority, rate filings should normally be suspended and the *status quo ante* preserved for the maximum period permitted by statute in circumstances where preliminary study leads the Commission to believe that there is substantial question as to whether a filing complies with applicable statutory standards.

Particular circumstances may warrant shorter suspensions. Situations present themselves from time to time in which rigid adherence to the general policy of preserving the *status quo ante* for the maximum statutory period makes for harsh and inequitable results. Such circumstances are presented here. Iowa's submittal indicates that it conducted two pre-filing meetings with its customers to discuss the expected filing. Each of these customers has consented to the proposed rate change including the proposed effective date. Under these circumstances, we believe that we should exercise our discretion to suspend the rates for only one day, permitting the rates to take effect on September 2, 1980, subject to refund.

The Commission orders:

(A) Iowa Public Service Company's submittal is hereby accepted for filing and suspended for one day to become effective September 2, 1980, subject to refund.[5]

(B) Customers are hereby permitted to intervene in this proceeding subject to the Commission's Rules of Practices and Procedure and the regulations under the Federal Power Act; *Provided, however,* that participation by the intervenors shall be limited to matters set forth in their petition to intervene; and *provided, further,* that the admission of the intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders by the Commission entered in this proceeding.

(C) Pursuant to the authority contined in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Act and by the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the Regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of the rates proposed in this docket.

(D) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a formal settlement conference in this proceeding to be held within 10 days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to consolidate or sever and motions to dismiss), as provide for in the Commission's Rules of Practice and Procedure.

(E) The Commission staff serve top sheets in this proceeding on or before November 20, 1980.

(F) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment A

Iowa Public Service Co., Rate Schedule Designations, Docket No. ER80-495

Dated: June 30, 1980
Filed: June 30, 1980

FPC Electric Tariff—Original Vol. No. 1

(1) Seventh Revised Sheet No. 1 (Supersedes Sixth Revised Sheet No. 1), List of Customers, Applicable Energy Charge, etc.

(2) Third Revised Sheet No. 2 (Supersedes Second Revised Sheet No. 2), Energy Cost Adjustment Clause

(3) Second Revised Sheet No. 3 (Supersedes First Revised Sheet No. 3), Energy Cost Adjustment Clause

(4) Original Sheet No. 3-A (Supersedes Exhibit A to 1st Revised Sheet No. 3), page 3 of 3, Statement O, Twelve Months Ending 12/31/79.

[FR Doc. 80-27549 Filed 9-8-80; 8:45 am]
BILLING CODE 6450-85-M

[4] Section 205(a) of the Federal Power Act, Section 4(e) of the Natural Gas Act, and Section 15 of the Interstate Commerce Act.

[5] The Commission staff's preliminary analysis indicates that the proposed rates will result in excess revenues. The showing of such excess might have been mitigated, at least in part, if Iowa had elected to support its rates on the basis of estimated Period II data rather than historical Period I information. While this election was within the discretion of the company, in the instant case, where the customers have consented to the proposed incease, we believe that production of reliable future cost estimates by the company might assist in forthcoming settlement discussions.

[Project No. 3259]

Joseph M. Keating; Notice of Application for Preliminary Permit

September 2, 1980.

Take notice that Joseph M. Keating (Applicant) filed on July 23, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-725(r)] for proposed Project No. 3259 to be known as Paoha Project located on Wilson Creek in Mono County, California. The proposed project would affect U.S. lands under the administration of the Bureau of Land Management. Correspondence with the Applicant should be directed to: Joseph M. Keating, 847 Pacific Street, Placerville, California 95667.

Project Description—The proposed project would consist of: (1) a proposed intake structure in an existing afterbay canal which is owned by the Southern California Edison Company; (2) a 2500-foot long buried penstock; (3) a powerhouse containing one generating unit rated at 500 kW; (4) a transmission line; and appurtenant facilities. The proposed project would utilize the regulated flows from the afterbay of Southern California Edison's Lundy powerplant. The average annual energy production is estimated to be 1,000 MWh.

Purpose of Project—The power and energy generated by the project would be sold to the Southern California Edison Company.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of 12 months, during which time it would conduct engineering studies and surveys, perform preliminary designs and do a feasibility analysis, prepare an environmental report, make a historical review, and prepare an FERC license application. No new roads are required to conduct the studies.

The estimated cost of the work to be performed under the preliminary permit is $35,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of applicaton for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power,

and all other information necessary for inclusion in an application for a license.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before November 3, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than January 2, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), *as amended,* 44 FR 61328 (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d), *as amended,* 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before November 3, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27571 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA80-2-26 (PGA80-2)(LFUT80-2), (AP80-2)(TT80-1), RP80-107)

Natural Gas Pipeline Co. of America; Order Accepting for Filing and Suspending Proposed Tariff Sheets and Consolidating Proceedings

Issued August 29, 1980.

On July 23, 1980, Natural Gas Pipeline Company of America (Natural) filed revised tariff sheets [1] to reflect a PGA increase of 2.19¢ per Mcf based on (1) a 6.18¢ per Mcf Purchased Gas Cost Adjustment composed of an 8.98¢ per Mcf increase from producer and pipeline suppliers and a (2.80¢) decrease from the Deferred Purchase Gas Cost Account; (2) a decrease of (0.84¢) in the Louisiana First Use Tax Adjustment and (3) Base Rate Decrease Adjustments of (0.55¢) from Advance Payments and (2.60¢) from Transportation Unit Adjustments.

Public notice of the filing was issued on July 31, 1980 providing for protests or petitions to intervene to be filed on or before August 22, 1980. Iowa Power and Light Company (Iowa) filed a petition to intervene on August 4, 1980 requesting that it be made a party to all matters which may arise in the proceeding. Iowa, having demonstrated an interest in this proceeding which warrants its participation, shall be granted intervention.

Based upon a review of Natural's filing, the Commission finds that the proposed tariff sheets has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept Natural's filing and suspend its effectiveness such that it shall become effective September 1, 1980, as described below, subject to refund and subject to the conditions described below.

A recent decision of the Court of Appeals for the District of Columbia Circuit has led the Commission to reassess the standards that it uses to fix the appropriate duration of a suspension period as we may impose with respect to rate increase filings.[2] We have done this as a predicate to our acting on this matter.

Though the regulatory schemes that the Commission administers involve a subtle and a difficult balancing of producer and transporter interests with consumer and shipper interests, their primary purpose is to protect the consumer and shipper against excessive rates and charges. Hence, it is our view that the discretionary power to suspend should be exercised in a way that maximizes this protection.

The decision to suspend a proposed rate increase rests on the preliminary finding that there is good cause to believe that the increase may be excessive or that it may run afoul of other statutory standards. The governing statutes say that "*any* [emphasis added] rate or charge that is not just and reasonable is hereby * * * declared unlawful."[3] This declaration places on the Commission a general obligation to minimize the incidence of such illegality.

Based on the foregoing, the Commission has determined that, in the exercise of its rate suspension authority, rate filings should normally be suspended and *status quo ante* preserved for the maximum period permitted by statute in circumstances where preliminary study leads the Commission to believe that there is substantial question as to whether a filing complies with applicable statutory standards.

Particular circumstances may warrant shorter suspensions. Situations present themselves from time to time in which rigid adherence to the general policy of preserving the *status quo ante* for the maximum statutory period makes for harsh and inequitable results. Such circumstances are present here * * * approved by order issued October 4, 1979, which authorized the inclusion of the advance payment adjustment discussed below, any rate change filed pursuant to such adjustment may be made subject to refund without suspension provided such change is made effective on the date originally proposed. In other words the advance payment portion of this filing need not be suspended in order for that portion of the increase to be made subject to refund. Because additional issues relating to affiliate purchases may require subsequent review and possible refunds, it is necessary to suspend the filing. Given that those costs reflect merely a rate change filed pursuant to Commission authorized tracking authority, we find special circumstances to exist. We find that a shortened suspension period is justified.

Our review of the advance payments portion of the proposed tariff indicates that it is based upon the same agreements and involves similar issues as those which are the subject of a formal proceeding in Natural's general rate filing under Section 4(e) of the Natural Gas Act in Docket No. RP80-107. Accordingly, the advance payments adjustment of the instant docket will be consolidated with those issues of the proceeding in Docket No. RP80-107. Further procedures may be established by the Presiding Administrative Law Judge in the consolidated proceeding.

Natural's filing includes increases pursuant to area rate clauses in the contracts between Natural and its producers. The Commission's

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[1] Third Substitute Fortieth Revised Sheet No. 5 and Second Revised Sheet Nos. 5C and 5D all to FERC Gas Tariff, Third Revised Volume No. 1.

[2] *Connecticut Light and Power Company* v. *Federal Energy Regulatory Commission,* ——— F.2d ——— (D.C. Cir. May 30, 1980).

[3] Section 205(a) of the Federal Power Act, Section 4(e) of the Natural Gas Act, and Section 15 of the Interstate Commerce Act.

acceptance of this filing shall not constitute a determination that any or all of the area rate clauses permit NGPA prices. That determination shall be made in accordance with the procedures prescribed in Order 23, as amended by subsequent orders, in Docket No. RM 79-22. Should it be ultimately determined that a producer is not entitled to an NGPA price under an area rate clause, the refunds made by the producer to the pipeline shall be flowed through to ratepayers in accordance with the procedures prescribed in the pipeline's PGA clause.

Natural's filing also reflects increases due to costs associated with purchases from affiliated production priced at NGPA levels. The Commission is unable to determine from the information submitted herein whether the proposed purchase price assigned to its affiliate production priced at NGPA levels satisfies the affiliated entities limitation set forth in section 601(b)(1)(E) of the NGPA. That section provides that in the case of any first sale between any interstate pipeline and any affiliate of such pipeline, any amount paid shall be deemed just and reasonable if in addition to not exceeding the applicable maximum lawful price ceiling, such amount does not exceed the amount paid in comparable first sale transactions between persons not affiliated with such pipeline. Accordingly, the Commission's acceptance of this increase is conditioned upon Natural's filing data within thirty days demonstrating that its purchases from its affiliates meet the affiliated entities test and is subject further to Commission review of that data.

The Commission Orders:

(A) Natural Gas Pipeline Company of America's proposed Third Substitute Fortieth Revised Sheet No. 5 and Second Revised Sheet Nos. 5C and 5D to FERC Gas Tariff, Third Revised Volume No. 1 is accepted for filing and suspended such that the filing shall become effective September 1, 1980 subject to refund, and subject to the conditions enumerated in the body of this order and the ordering paragraphs below.

(B) The advance payments portion (AP80-2) of the instant Docket No. TA80-2-26 is hereby consolidated with Docket No. RP80-107 for purposes of hearing and decision.

(C) Natural shall file data within 30 days of the issuance of this order to show that the pricing of gas purchased from its affiliates is in accordance with section 601(b)(1)(E) of the NGPA.

(D) The costs associated with Natural's purchases from its producer affiliates shall be collected subject to refund and subject to: (1) Natural's filing within 30 days of the issuance of this order the data called for in Paragraph (C) above; and (2) review of such data by the Commission to determine what further action is appropriate.

(E) Iowa Light and Power Company shall be permitted to intervene subject to the Commission's rules and regulations; *Provided,* however, that the participation of the intervenor shall be limited to matters affecting asserted rights and interests specifically set forth in the petition to intervene; and *Provided, further,* that the admission of such intervenor shall be construed as recognition that it might be aggrieved by any order entered in this proceeding.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27550 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-692]

New Bedford Gas & Edison Light Co.; Notice of Filing

August 29, 1980.

The filing Company submits the following:

Take notice that on August 26, 1980, New Bedford Gas and Edison Light Company (New Bedford) tendered for filing on behalf of itself, Montaup Electric Company, and Boston Edison Company supplemental data pertaining to their applicable gross investments, combined Federal income and franchise tax rates, and local tax rates for the twelve month period ending December 31, 1979. New Bedford states that this supplemental data is submitted pursuant to a letter order of the Federal Power Commission in Docket No. E-7981 dated April 26, 1973 accepting for filing New Bedford's Rate Schedule FERC No. 21, Boston Edison Company's Rate Schedule FERC No. 67, and Montaup Electric Company's Rate Schedule No. 27.

New Bedford states that these rate schedules have previously been similarly supplemented for the calendar years 1972 through 1978.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 22, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27572 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3231]

North American Hydro, Inc.; Notice of Application for Preliminary Permit

September 2, 1980.

Take notice that North American Hydro, Inc. (Applicant) filed on July 1, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for proposed Project No. 3231 to be known as the Neshonoc Project located on the LaCrosse River in LaCrosse County, Wisconsin. The project is located near the Town of Hamilton. Correspondence with the Applicant should be directed to: Mr. Charles Alsberg, Box 676, Wautoma, Wisconsin 54982.

Project Description—The proposed project would consist of: (1) an existing 28-foot high and 215-foot long reinforced concrete and masonry dam; (2) an existing powerhouse with a proposed installed generating capacity of 231 kW and an annual energy output estimated to be 1,500 MWh; (3) an existing 687-acre reservoir with 3,100 acre-feet of storage capacity at the normal maximum surface elevation 699.5 feet msl; and (4) appurtenant facilities.

Purpose of Project—North American Hydro, Inc. proposes to develop the hydroelectric potential of the project and sell the power to LaCrosse County or Northern States Power Comany.

Proposed Scope and Cost of Studies Under Permit—The Applicant seeks issuance of a preliminary permit for a period of 36 months. During this time the significant legal, institutional, engineering, environmental, marketing, economic and financial aspects of the project will be defined, investigated, and assessed to support an investment decision. The report of the proposed study will address whether or not a commitment to implementation is warranted, and, if the findings are positive, the Applicant intends to submit a license application. The applicant's estimated total cost for performing these studies is $28,670.

Purpose of Preliminary Permit—A preliminary permit does not authorize

construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before November 3, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than January 2, 1981. A notice of intent must conform with the requirements of 18 C.F.R. § 4.33 (b) and (c), *as amended,* 44 FR 61328 (October 25, 1979). A competing application must conform with the requirements of 18 C.F.R. § 4.33 (a) and (d), *as amended,* 44 FR 61328 (October 25, 1979).

Comments, Protests or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before November 3, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb

Secretary.

[FR Doc. 80-27553 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-696]

Northern States Power Co; Notice of Filing

September 2, 1980.

The filing Company submits the following:

Take notice that Northern States Power Company on August 26, 1980, tendered for filing Supplement No. 2, dated August 14, 1980, to the Interconnection and Interchange Agreement, dated September 16, 1977, with the City of Fairfax, Minnesota.

Supplement No. 2 amends the Agreement providing for the sale of Load Pattern Power to the City to supply its requirements in excess of that provided by WAPA.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 Capitol Street, N.E., Washigton, D.C. 20426, in accordance with Sections 1.8, 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 22, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27554 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3237]

Penobscot Hydro Associates; Application for Preliminary Permit

September 2, 1980.

Take notice that Penobscot Hydro Associates (Applicant) filed on July 3, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3237 to be known as the Arches Project located on the West Branch of the Penobscot River in Piscataquis County, Maine. Correspondence with the Applicant should be directed to: Peter F. O'Connell, Penobscot Hydro Associates, 140 Lisbon Street, Lewiston, Maine 04240.

Project Description—The proposed project would consist of: (1) a new 460-foot long, 52-foot high concrete gravity dam; (2) two 17-foot diameter 4,500-foot long penstocks; (3) a 15 acre reservoir with no storage capacity; (4) a fishway; (5) a powerhouse located approximately 4,500 feet downstream containing two turbine/generator units with a total rated capacity of 33.6 MW; and (6) appurtenant facilities. The proposed run-of-the-river project would generate up to 119,077,000 kWh annually saving the equivalent of 195,000 barrels of oil or 55,100 tons of coal.

Purpose of Project—Markets for the electric energy produced would be determined during the term of the preliminary permit.

Proposed Scope and Cost of Studies Under Permit—The work proposed under this preliminary permit would include geotechnical investigations at the site of the proposed dam, engineering plans, and an environmental assessment. Geotechnical investigations would include a boring program in the vicinity of the axis of the proposed dam. Applicant states that all disturbed areas would be regraded and restored. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the work to be performed under this preliminary permit would cost $700,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other necessary information for inclusion in an application for a license.

Agency Comments—Federal, State and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other

formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before November 3, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than January 2, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (as amended, 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33 (a) and (d) (as amended, 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Federal Energy Regulation Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before November 3, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27555 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-697]

Puget Sound Power & Light Co.; Notice of Filing

September 2, 1980.

The filing Company submits the following:

Take notice that on August 26, 1980, Puget Sound Power & Light Company (Puget) tendered for filing a rate schedule, an Exchange Agreement between Puget and Pacific Gas and Electric Company (PG and E).

The Agreement sets forth the Terms and Conditions under which Puget will make available capacity and energy to PG and E during the months of July and August 1980. This capacity and energy will help PG and E meet is anticipated heavy airconditioning loads on its system this summer. PG and E will make available this capacity and energy to Puget during the months of December 1980 and January 1981.

A copy of the filing has been sent to Pacific Gas and Electric.

Any person desiring to be heard or to protest said filing should file a peition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 22, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27556 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. SA80-88]

Rochester Gas & Electric Co.; Application for Staff Adjustment

Issued: August 29, 1980.

Take notice that on January 28, 1980, Rochester Gas and Electric Corporation (RG&E) filed with the Federal Energy Regulatory Commission (Commission) an application for a staff adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), wherein RG&E sought relief from the Commission's regulations implementing the incremental pricing program.[1]

RG&E is an investor-owned public utility that provides gas, electric and steam service to customers in western New York. In 1977, RG&E sold 62.8 percent of the total steam generated at its district heating facility Station 9[2] to users that are not exempt from incremental pricing. Under § 282.103(d)(2) of the Commission's regulations, a district heating facility is not considered to be an "industrial facility," and therefore is exempt from incremental pricing, only if it sold more than 50 percent its steam in 1977 to exempt users. RG&E seeks an adjustment from the operation of the regulations that subject Station 9 to incremental pricing.[3]

The procedures applicable to the conduct of this adjustment proceeding are found in § 1.41 of the Commission's Rules of Practice and Procedure, Order No. 24 issued March 22, 1979 (44 FR 19861, March 30, 1979).

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of § 1.41. All petitions to intervene must be filed on or before September 24, 1980.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27551 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ID-1846]

Herbert W. Sears; Notice of Filing

August 29, 1980.

Take notice that on August 19, 1980, Herbert W. Sears (Applicant) filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President, The Connecticut Light and Power Company, Public Utility
Senior Vice President, The Hartford Electric Light Company, Public Utility
Senior Vice President, Western Massachusetts Electric Company, Public Utility
Senior Vice President, Holyoke Water Power Company, Public Utility
Senior Vice President, Holyoke Water Power Company, Public Utility

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of

[1] The January 28, 1980 application requested an interpretation of the General Counsel pursuant to 18 CFR 1.42 that RG&E's facility was not subject to incremental pricing and, in the alternative, an adjustment. Accordingly, no action was taken on the staff adjustment prior to July 10, 1980, when the General Counsel issued an interpretation that the facility was subject to incremental pricing under the Commission's regulations.

[2] Under § 282.103(d)(2), a district heating facility is a facility which generates steam which is sold to the public.

[3] On July 18, 1980, the Director of the Office of Pipeline and Producer Regulation issued an order in this docket granting interim relief pending the ultimate disposition of the application. The granting of interim relief, however, may not be viewed as an expression of position rearding the merits of the application.

practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 26, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27557 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ID-1923]

Lawrence H. Shay; Notice of Filing

September 2, 1980.

Take notice that on August 5, 1980, Lawrence H. Shay (Applicant) filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Vice President and Chief Administrative Officer, Western Massachusetts Electric Company, Public Utility

Vice President and Chief Administrative Officer, Holyoke Water Power Company, Public Utility

Vice President and Chief Administrative Officer, Holyoke Power and Electric Company, Public Utility

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 26, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27558 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ID-1839]

H. Russell Smith; Order Granting Authority To Hold Certain Interlocking Directorates

Issued: September 2, 1980.

On May 19, 1978, Mr. H. Russell Smith (Applicant) submitted an application for authority to hold the positions of Director of Southern California Edison Company (Edison)—a jurisdictional utility—and Director of Beckman Instruments, Inc. (Beckman)—a supplier of electrical equipment. Mr. Smith's application was filed pursuant to section 305(b) of the Federal Power Act and Part 45 of our regulations.

The application states that Mr. Smith has held the position of Director of Edison since 1974 and has also held the position of Director of Beckman since 1976.[1] Furthermore, Applicant states that as a Director of both Beckman and Edison, he has performed the duties that are customarily performed by an individual holding such positions.

Notice of Mr. Smith's application was issued on June 5, 1978,[2] with comments due on or before June 26, 1978. On March 13, 1980, Edison filed a petition to intervene out of time. In its petition, Edison requests that we either grant Mr. Smith's application or declare that Mr. Smith's position with Beckman is not within the scope of the Federal Power Act. Edison's petition also contains updated sales data concerning the Edison-Beckman relationship.

On July 24, 1980, Edison submitted certain supplemental information pursuant to our request. In its supplemental filing Edison states that the materials purchased from Beckman consist primarily of instruments used to measure the purity of steam produced at a number of Edison's generating stations.

Discussion

We find that Edison's participation in this proceeding may be in the public interest. Accordingly, we shall grant its petition to intervene out of time.

As noted above, Edison contends that Beckman is not an electrical equipment supplier of Edison within the meaning of the Federal Power Act.[3] However, as Edison's supplemental filing indicates, Beckman sells instruments to Edison which are used in the electrical generating process. We conclude from the nature of these transactions that Beckman is a supplier of electrical equipment to Edison, and that the relationship between Beckman and Edison is of a type contemplated by Section 305(b) of the Federal Power Act. Therefore, our approval is required in order for the applicant to hold the requested interlocking positions.

Where the relationship between a jurisdictional utility and an electrical equipment supplier is of a *de minimis* character, we have held that the public interest would best be served by granting an application to hold interlocking positions, while imposing an annual reporting requirement to ensure continued consistency with statutory requirements, *e.g.*, Charles T. Fisher III, Docket No. ID-1758 (October 25, 1979). The Commission here finds that the existing relationship between Edison and Beckman is, in fact, *de minimis* whether considered in terms of percentage or total dollar purchases. For illustrative purposes, we note that data submitted by Edison indicate that in 1979, Edison's purchases from Beckman constituted 0.004% of Edison's total purchases of material; in 1978, that proportion was 0.007%. Under these circumstances, we shall grant Mr. Smith's application, subject to the reporting conditions stated below.

The Commission Orders

(A) Until further order of the Commission, Applicant is authorized to hold the positions of Director of Beckman and Director of Edison, subject to Part 45 of the Commission's regulations (18 CFR 45 *et seq.*), and further subject to the provisions of ordering paragraphs (B) and (C) below.

(B) On or before April 30, 1981, and on or before April 30 of every year thereafter during which Applicant holds the positions authorized by this order, Applicant shall submit a report disclosing, for the preceding year, the nature and dollar amount of any electrical equipment supplied by Beckman, or any subsidiary of Beckman, either directly or indirectly, or through wholesale or retail suppliers, or any other intermediary to Edison.

(C) The Commission reserves the right to require Applicant to make further showings that neither public nor private interests will be adversely affected by the continued holding of the interlocking positions authorized by this order.

(D) Edison is hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission; *Provided, however,* that participation by the intervenor shall be limited to matters set forth in its petition to intervene; and *provided, further,* that the admission of the intervenor shall not be construed as recognition by the Commission that it might be aggrieved

[1] Pursuant to our regulations, Mr. Smith should have filed his application within thirty (30) days of his election to the position of Director of Beckman. 18 CFR 45.3(b). However, in his application, Mr. Smith claims that he did not comply with this rule because he did not believe, and still does not believe, that Beckman is an electrical supplier of Edison within the purview of the Federal Power Act.

[2] 43 FR 25381 (1978).

[3] Edison does not challenge the fact that it is a jurisdictional electric utility. *See Southern California Edison Co.*, 6 F.P.C. 549, 550 (1947).

because of any order or orders by the Commission entered in this proceeding.

(E) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27552 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER76-205]

Southern California Edison Co.; Notice of Filing

August 29, 1980.

The filing company submits the following:

Take notice that on August 18, 1980, Southern California Edison Company, (Edison) submitted for filing revised resale rate schedules. The instant filings have been made in order to correct errors made in Edison's compliance filings. The compliance filings were made pursuant to Commission Opinion No. 62-A.

Copies of this filing have been sent to the Public Utilities Commission of the State of California and to Arizona Corporation Commission.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such protests should be filed on or before September 22, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27559 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. G-12706, et al.]

Texas Eastern Transmission Corp., et al.; Filing of Pipeline Refund Reports and Refund Plans

September 2, 1980.

Take notice that the pipelines in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, any type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before September 17, 1980. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix

Filing date	Company	Docket No.	Type filing
7/30/80	Texas Eastern Transmission Corp..	G-12706	Plan.
8/15/80	Texas Eastern Transmission Corp..	G-12706	Report.
8/19/80	Texas Eastern Transmission Corp..	RP80-133	Plan.
8/25/80	Northern Natural Gas Co..	RP78-56	Report.
8/25/80	Columbia Gas Transmission Corp..	TA80-1-21	Report.
8/25/80	Texas Eastern Transmission Corp..	RP78-87	Report.

[FR Doc. 80-27561 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. SA80-146]

Texas Gas Pipe Line Corp.; Application for Adjustment

September 2, 1980.

On August 21, 1980, Texas Gas Pipe Line Corporation (Texas Gas) filed with the Commission an application for an adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301 *et seq.* By its application, Texas Gas seeks an adjustment from the Commission's regulations in Part 282, implemented by Order No. 49, in Docket No. RM79-14, issued September 29, 1979. The requested adjustment would exempt Texas Gas from computing and charging incremental prices to two of its customers, Transcontinental Gas Pipe Line Corporation (Transco) and Texas Eastern Transmission Corporation (Texas Eastern).

Texas Gas claims that the requested adjustment is fully justified under section 502(c) of the NGPA, which authorizes adjustments as may be necessary to prevent special hardship, inequity or unfair distribution of burdens. Texas Gas asserts that compliance with Order No. 49 would be unduly burdensome, as the accounting and financial personnel which are required for compliance with the order are completely disproportionate to the magnitude of the regulatory requirements and statutory intent. Texas Gas further asserts that compliance would be duplicative, and therefore unnecessary, since Transco and Texas Eastern, who purchase approximately 5,700 Mcf per day from Texas Gas, are also required to make the necessary incremental pricing computations.

Texas Gas proposes to provide Transco and Texas Eastern with all data and/or estimates necessary for the computation of incremental pricing costs and surcharges applicable to the volumes of natural gas acquired by Texas Gas, and to notify the Commission, Transco and Texas Eastern of any operational change which would affect the basis for the requested exemption.

The procedures applicable to the conduct of this adjustment proceeding are found in § 1.41 of the Commission's Rules of Practice and Procedure, Order No. 24, issued March 22, 1979.

Any person desiring to be heard or to protest this adjustment shall file a petition to intervene or protest in accordance with provisions of § 1.8 or § 1.10 of the Commission's Rules of Practice and Procedure. All petitions to intervene or protest shall be filed with the Secretary of the Commission, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C.20426, and must be filed by September 24, 1980. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make the protestants party to the proceeding. Any person desiring to become a party must file a petition to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27560 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-699]

The Washington Water Power Co.; Notice of Filing

September 2, 1980.

The filing Company submits the following:

Take notice that on August 27, 1980, The Washington Water Power Company (Washington) tendered for filing copies of an agreement with Bonneville Power Administration (Bonneville) providing for the transfer of power and energy over the transmission facilities of Washington or Bonneville to the other party's customers.

For many years, Washington and Bonneville have each provided

transmission service to the other party for that party's customers connected to the other party's transmission facilities. This service was provided under multiple agreements—in some instances multiple agreements for same customer. The subject agreement replaces these multiple agreements and consolidates into one agreement essentially the same provisions (rates excepted) for transfer service.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 22, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27562 Filed 9-8-80; 8:45 am]

BILLING CODE 6450-85-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-1600-1; OPP-180471]

Department of Agriculture; Issuance of Specific Exemption for Carbaryl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the Animal and Plant Health Inspection Service, U.S. Department of Agriculture (hereafter referred to as the "Applicant"), to use Sevin 4 Oil (carbaryl) on small grains and alfalfa to control grasshoppers in seventeen western States. The specific exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemption expires on August 15, 1980.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Registration Division (TS-767), Rm. E-107, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202-426-0223.

SUPPLEMENTARY INFORMATION: According to the Applicant, grasshoppers are the most serious pest in western rangeland. Each year they occur in outbreak numbers in some locations and on many occasions cause severe economic loss on rangeland and nearby crops. Most of the grasshoppers which are of economic concern are strong flyers. After devastation of rangeland, they quickly migrate to nearby cropland. Severe infestations are expected to occur in Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming this year.

Although there are several hundred species of grasshoppers in the United States, only about 35 of them are considered perennial pests. These species prefer green vegetation to dry and prefer cultivated plants to wild plants. Small populations feed selectively on the tenderest parts of grasses and forbes. However, when present in large numbers, they virtually consume all vegetation.

Female grasshoppers deposit egg pods about one inch below the soil surface in late summer or early fall. These lie dormant through the winter and hatch the following spring or early summer. Young grasshoppers (nymphs) emerge and will molt about five or six times before they are able to fly. Warm, dry weather conditions are generally the most favorable for high grasshopper populations.

The Applicant proposes to use Union Carbide's product, Sevin 4 Oil (EPA Reg. No. 264-323, formerly EPA No. 1016-70), in its grasshopper control program on alfalfa and small grains. Treatment will be limited to include only those parts of the alfalfa and small grain fields which are adjacent to rangeland which has been treated for grasshopper control. Approximately 200,000 pounds of carbaryl, the active ingredient (a.i.), will be needed. A single aerial application will be made using 0.5 pound a.i. plus 4 ounces of diesel oil for a total formulation of 20 ounces per acre. All applications will be carried out under the supervision of certified Federal and State entomologists.

According to the Applicant, the cost of grasshopper control would be prohibitive on low-value rangelands and if left entirely to the individual owner, treatment would not be carried out. This would ultimately result in a much larger acreage becoming infected and needing control. Consequently, if private lands were left untreated, it would negate control on contiguous public lands. Grasshopper control will be conducted on an as-needed basis only, the costs of which are to be shared by Federal and State agencies as well as individuals.

The Applicant cites a number of alternatives which would not provide control of grasshoppers in the 1980 Cooperative Grasshopper Management Program. Biological controls such as fungi, e.g., *Entomophthora grylli,* bacteria e.g., *Bacillus thuringiensis,* viruses, protozoa e.g., *Nosema locustae,* and parasites and predators e.g., insects, moles, and birds, are either in research stages or do not provide sufficient control until after considerable damage has been incurred. Cultural and mechanical means (tillage methods) are not desirable due to the high cost and increased likelihood of wind and water erosion. Eradication is not a feasible nor desirable option. The Applicant chose malathion and carbaryl as the insecticides for use in the 1980 Cooperative Grasshopper Management Program. Other insecticides such as diazinon, dimethoate, parathion, and toxaphene, were considered but rejected due to various environmental, safety or labeling problems.

Carbaryl, as Sevin 4 Oil, was selected to treat small grain and alfalfa fields instead of malathion even though malathion is already registered for this use. This choice was made because malathion is extremely short-lived, loses some effectiveness in cool weather, and is not resistant to rainfall. Sevin 4 Oil, which is already registered for use on rangeland for grasshopper control, has none of these problems which malathion exhibits.

Carbaryl has a permanent tolerance of 100 parts per million (ppm) in or on alfalfa and alfalfa hay. Some carbaryl formulations are presently registered for use on alfalfa to control grasshoppers; however, the formulation of choice, Sevin 4 Oil, is not. This formulation is preferred to others because it contains oil which enhances its effectiveness.

Permanent tolerances for carbaryl are also established for the straw and green fodder of oats, barley, rye and wheat at 100 ppm. A zero ppm tolerance has also been established for carbaryl on the grain of oats, barley, rye, and wheat.

EPA anticipates no unreasonable hazard to the environment from this use of carbaryl.

After reviewing the application and other available information, EPA has determined that the criteria for an exemption have been met. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until August 15, 1980, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. Union Carbide's product Sevin 4 Oil, EPA Reg. No. 264-323 (formerly EPA Reg. No. 1016-70), may be applied. If an unregistered label is used, it must contain the identical applicable precautions and restrictions which appear on the registered label;

2. Treatment of alfalfa and small grain fields will be limited to include only those portions adjacent to rangeland which has been treated for grasshopper control;

3. Treatments may be made in the seventeen States named above;

4. Sevin 4 Oil may be applied at a rate of 0.5 pound a.i. plus 4 ounces of diesel oil for a total formulation of 20 ounces per acre;

5. Applications will be made using aerial equipment and carried out under the supervision of certified Federal or State entomologists;

6. A maximum of one application may be made;

7. A maximum of 200,000 pounds a.i. may be used;

8. Prior to the initiation of this program, the appropriate State agencies must be advised. Also, notification of residents in the areas to be treated must be carried out as outlined in the Rangeland Grasshopper Cooperative Management Program;

9. All applicable directions, restrictions, and precautions on the EPA-registered label must be followed;

10. Alfalfa treated in accordance with the above provisions is not expected to have residues of carbaryl and its metabolites in excess of 100 ppm in or on alfalfa and alfalfa hay. Small grains (oats, barley, rye, and wheat) treated in accordance with the above are not expected to have residues of carbaryl and its metabolites in excess of 3 ppm in or on grain or in excess of 100 ppm in or on straw and green fodder. Commodities with residue levels not in excess of the above may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of this action;

11. The EPA shall be immediately informed of any adverse effects resulting from the use of carbaryl in connection with this program; and

12. The Applicant is responsible for ensuring that these conditions are met and must submit a report summarizing the results of this program by January 31, 1981.

(Sec. 18, as amended (92 Stat. 819; 7 U.S.C. 136))

Dated: August 27, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-27591 Filed 9-8-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1595-1]

Applications for Waiver of Effective Date of the 1981 Model Year Carbon Monoxide Emission Standard for Light-Duty Motor Vehicles—Ninth Decision of the Administrator

I. Introduction

This is the ninth decision I have issued under Section 202(b)(5) of the Clear Air Act, as amended (Act), 42 U.S.C. 7521(b)(5), regarding applications from automobile manufacturers for waiver of the 3.4 grams per vehicle mile (gpm) carbon monoxide (CO) emission standards scheduled to apply to 1981 and 1982 model year light-duty motor vehicles and engines.[1]

As the introductions to the previous consolidated decisions explain, section 202(b)(1)(A) of the amended Act establishes a schedule for implementing standards applicable to CO emissions for 1977 and later model year light-duty motor vehicles and engines.[2] The 1977 amendments to the Act, however, include a new provision allowing the Administrator of the Environmental Protection Agency (EPA), under certain limited conditions, to delay for up to two model years implementation of the statutory 3.4 gpm CO standard scheduled to take effect for the 1981 model year.[3] However, these amendments require the Administrator to promulgate standards for vehicles granted waiver applications which do not permit CO emissions over 7.0 gpm.[4]

In response to waiver applications received prior to the one under consideration, EPA held five public hearings and issued eight consolidated decisions pursuant to section 202(b)(5)(A).[5] In those decisions, I denied waivers for certain engine families either because I determined that effective control technology[6] was available contrary to the requirement of section 202(b)(5)(C)(iii) of the Act or because the applicant failed to provide sufficient information to establish that effective control technology was not available. Furthermore, the applicants failed to establish that considerations of costs, driveability, or fuel economy gave me a basis for reaching a different conclusion. I granted the waiver applications covering the remaining engine families after determining for each of those families that available information established sufficient likelihood that the requisite technology would not be available, considering costs, driveability, and fuel economy, and that each of those applications met all of the remaining statutory criteria for receiving a waiver.

On May 27, 1980, EPA received a waiver application from Volkswagen (VW).[7] Specifically, VW submitted an application for the 1981 model year for a carbureted 1.46 liter (L) one-venturi (V) engine family similar in several respects to the 1.6 liter carbureted engine family earlier denied a waiver.[8] EPA held a

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[1] The preceding decisions were published as follows: 44 FR 53376 (September 13, 1979); 44 FR 69417 (December 3, 1979); 45 FR 7122 (January 31, 1980); 45 FR 17914 (March 19, 1980); 45 FR 37360 (June 2, 1980); 45 FR 40030 (June 12, 1980); 45 FR 49876 (July 25, 1980); 45 FR 53400 (August 11, 1980).

[2] Regulations were promulgated on August 24, 1978, setting a CO standard of 3.4 gpm for 1981 and later model year vehicles. 40 CFR 86.081-8(a)(1)(ii). This standard represents at least a 90 percent reduction in CO emissions from the CO standard applicable to 1970 model year vehicles.

[3] Section 202(b)(5)(C) of the Act provides, in part:

The Administrator may grant such waiver if he finds that protection of the public health does not require attainment of such 90 percent reduction for carbon monoxide for the model years to which such waiver applies in the case of such vehicles and engines and if he determines that—

(i) such waiver is essential to the public interest or the public health and welfare of the United States;

(ii) all good faith efforts have been made to meet the standards established by this subsection;

(iii) the applicant has established that effective control technology, processes, operating methods, or other alternatives are not available or have not been available with respect to the model in question for a sufficient period of time to achieve compliance prior to the effective date of such standards, taking into consideration costs, driveability, and fuel economy; and

(iv) studies and investigations of the National Academy of Sciences conducted pursuant to subsection (c) and other information available to him has not indicated that technology, processes, or other alternatives are available (within the meaning of clause (iii)) to meet such standards.

[4] As noted in previous decisions, Section 202(b)(5) of the Act requires that I make a separate assessment for each vehicle model covered by a waiver request. See, e.g., 44 FR 53376 (September 13, 1979); 44 FR 69416 (December 3, 1979); 45 FR 7122 (January 31, 1980). Thus, these earlier consolidated decisions generally have included separate decisions for individual engine families. As in the previous decisions, I have distinguished among engine families primarily on the basis of engine displacement. See note 17, second consolidated decision, 44 FR 69416, 69418 (December 3, 1979).

[5] EPA has included testimony received at these five hearings, as well as all other information considered in deciding these five groups of waiver applications, in EPA public Dockets EN-79-4, EN-79-17, EN-79-19, EN-80-1 and EN-80-9.

[6] As was the case in the earlier consolidated decisions, I am using the term "technology" in this decision to encompass the statutory language "technology, processes, operating methods, or other alternatives" included as part of section 202(b)(5)(C)(iii) of the Act.

[7] Volkswagenwerk, A.G.

[8] 44 FR 53376 (September 13, 1979).

hearing on this application on June 20, 1980.[9]

This decision will address the waiver request from VW on the basis of recently provided information from VW and from other sources.[10]

II. Summary of Decision

I am denying the waiver request by VW covering its 1.46L/1–V engine family for the 1981 model year. VW has failed to provide information sufficient to establish that effective control technology is unavailable for this engine family for the model year in question. Instead, the information which VW did provide does not include enough emissions data to demonstrate the likely effect on emissions of certain engineering modifications which VW still could employ to try to meet the 3.4 gpm standard for the 1981 model year. In addition, VW has alternative technology (namely, its 1.7L fuel injected (FI) engine family) which it can employ in the vehicle model covered by its waiver request and which is capable of meeting the 3.4 gpm CO standard. Considerations of costs, driveability, or fuel economy, whether viewed separately or cumulatively, do not give me a basis for determining that VW has established the unavailability of technology for this engine family.

While VW's request may meet some of the remaining statutory criteria for receiving a waiver, my determinations regarding available technology, considering costs, driveability, and fuel economy, preclude me from granting a waiver covering this engine family.

III. Discussion

A. *Availability of Technology*

The decision I have made here on whether to grant or deny the requested waiver again turns primarily on whether technology is available to enable an engine family covered by this waiver application to meet the 3.4 gpm CO standard in the 1981 model year. Section 202(b)(5)(C)(iii) of the Act expressly assigns the applicant the task of establishing that effective CO control technology is not available, taking into consideration costs, driveability, and fuel economy. Even if the Administrator determines that an applicant has met this burden, section 202(b)(5)(C)(iv) requires the Administrator to consider whether NAS studies or other information indicate that technology is available, considering costs, driveability, and fuel economy, before granting a waiver request.

As part of my assessment of technology, I have considered the results of NAS studies and investigations [11] conducted under section 202(c) of the Act regarding available technology, processes, or other alternatives. For the reasons discussed in my recent consolidated waiver decisions, the findings of the available NAS studies do not contradict my assessment regarding the availability of technology for this engine family.[12]

As was the case in the previous consolidated CO waiver decisions, this decision relies on information contained in the waiver application and other information found in the public record.[13]

I previously denied VW's waiver request for its 1.6L carbureted engine family because I determined that alternative technology is the form of VW's 1.6L/FI engine family was capable of meeting the 3.4 gpm CO standard and was available for use in the VW vehicle model in question.[14] In addition, I determined that VW failed to show that it would pass any cost savings related to the carbureted version on to consumers and that it would suffer significant sales losses were it unable to market the carbureted version of its 1.6L engine family.[15]

Volkswagen's new application requested a waiver to a CO standard of 7.0 gpm for its 1.46L/1–V engine family with a non-feedback carburetor system for the 1981 model year only. VW has marketed substantially similar versions of this engine family for several years prior to the 1981 model year.[16] VW stated that it now wishes to use this engine family instead of the 1.6L feedback carburetor (FBC) engine family which it initially had planned to market in some of its Rabbit model vehicles before it was denied a waiver in my first consolidated decision.[17] VW explained that it wants to market a carbureted engine version of its Rabbit model to help make successful its planned expansion into the U.S. market through the opening of an additional assembly plant in Sterling Heights, Michigan, in 1982.[18]

In this application, VW contends that technology is unavailable to enable its 1.46L/1–V engine family to meet the 3.4 gpm CO standard for the 1981 model year (but admits such technology should be available for the 1982 model year).[19] In addition, VW stated (1) that it discontinued development work on its 1.6L/FBC engine family as a result of the previous waiver denial and then began development work on its 1.46L/1–V engine family, and (2) that because of deteriorating market conditions it now needs to market a less expensive carbureted version of its 1.7L fuel injected Rabbit model.[20] VW indicated that it is unable to employ as part of its 1.46L engine family a more sophisticated feedback carburetor system which would be capable of meeting the statutory standard before the 1982 model year because components for this system would not be available from Carter Carburetor Division in time for the 1981 model year.[21]

To support its contention that effective control technology is not available, VW has provided both descriptions of the systems it has been considering in trying to attain the 3.4 gpm CO emission standard and low-mileage emission test results it has measured from vehicles incorporating those systems. I also have reviewed data from extended-mileage emission tests performed on different versions of the VW vehicle model in question for the purpose of receiving certification for the 1980 model year.

However, VW has not provided sufficient emission data on this engine family with calibrations optimized to meet the 3.4 gpm standard to establish that effective control technology will not be available for the 1981 model year.[22] As indicated in the Guidelines for

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[9] The transcript from this hearing is located in EPA Public Docket EN–80–11. This decision uses the following abbreviations: VW. App.—Volkswagen Application for CO Waiver, dated May 27, 1980, for its 1.46L/1–V engine family.

[10] See the discussion on my considerations of other sources of information in the previous waiver decisions, e.g., section III(B)(1)(C), 44 FR 69416, 69422 (December 3, 1979).

[11] Report by the Committee on Motor Vehicle Emissions by the National Research Council of the National Academy of Sciences, dated June, 1980. See also discussions of the applicability of earlier NAS studies in previous CO waiver decisions; e.g., 44 FR 53376, 53386 (September 13, 1979) and 44 FR 69416, 69423, 69428 (December 3, 1979).

[12] See, e.g., 45 FR 49676, 49678 (July 25, 1980); 45 FR 53400 (August 11, 1980).

[13] Much of this information was gathered for an included in the records for the previous consolidated CO waiver decisions. See note 5, supra. Those records have been incorporated by reference into the record for this ninth decision. EPA Public Docket EN–80–13.

[14] 44 FR 53376, 53385–53386 (September 13, 1979).

[15] 44 FR 53376, 53386, n. 94 (September 13, 1979).

[16] VW supp. submission, July 1, 1980 p. 1.

[17] 44 FR 53376 (September 13, 1979). VW App., Executive Summary.

[18] June 20, 1980 Transcript, pp. 34–36. VW supp. submission, July 1, 1980, p. 4.

[19] VW App., section 3.

[20] Id., Executive Summary. VW has increased the displacement (to 1.7L) of its 1.6L/FI engine judged as available alternative technology in my first decision.

[21] June 20, 1980 Transcript, pp. 60–61. VW explained it is trying to employ carburetors produced by a U.S. manufacturer, in order to maintain a long-term source of U.S. components.

[22] App. A, sections V, IX. See also June 20, 1980 Transcript, pp. 70–73.

Waiver Applications [23] and in previous waiver decisions,[24] the manufacturer must provide sufficient emission data on a system designed to meet the 3.4 gpm standard to permit me to assess adequately the capability of its emission control system to meet Federal emission standards for the model years in question through the use of the Monte Carlo statistical simulation and appropriate factors representing the likely effect on emissions from available technological improvements.

Instead, the only emission test results VW provided on technology geared toward meeting 1981 model year emission requirements were low-mileage development data on a relatively unsophisticated emission control system which has undergone only a minimal amount of development toward meeting the 1981 model year statutory emission standard.[25] These data do not give me an adequate basis for determining whether this engine family can meet this standard in certification or in production.

The only information VW provided on the likely emission durability characteristics of the 1981 1.46L/1–V engine family was the certification test "deterioration factor" (DF) from its 1980 predecessor, which indicates no projected CO emissions control deterioration over the engine family's 50,000-mile statutory useful life.[26]

Even assuming that this DF accurately projects the CO emissions control deterioration of the 1981 version of this engine family, and even recognizing that this would serve only to increase the likelihood that this engine family would pass the Monte Carlo simulation, this analysis still might not adequately indicate the emission control capabilities of this engine family. EPA cannot apply factors in order to accurately predict the emissions control performance benefit in the Monte Carlo simulation unless the waiver applicant has calibrated the engine family in question for optimal emissions control through a reasonably comprehensive development program.[27] Here, development data supplied by VW only reflect about two months of emissions control calibration development testing on this engine family in a configuration targeted to meet a 3.4 gpm CO standard.[28] The technical analysis in Appendix A indicates that several emission test vehicle components may well have employed less than optimal calibrations to enable this engine family to meet the statutory standards.[29] VW did not supply sufficient information to enable EPA to determine whether these calibrations were optimal or whether factors could be applied to reflect available improvements to those calibrations. VW has had sufficient lead time to continue development work on these parameters and apply the results of that work in time for 1981 model year production, because the calibration settings involved here have relatively short lead-time requirements.[30]

I have previously evaluated engine families which utilized relatively unsophisticated emissions control systems for which the manufacturer demonstrated a considerable amount of development work and optimization of calibrations.[31] I have also evaluated engine families which utilize previously unavailable and relatively sophisticated emissions control systems for which less information was available.[32] However, VW has submitted a waiver application for an emissions control system which it has been using for several years but for which there is available only a minimal amount of 1981 model year development information.[33] Under these circumstances, in which available lead time still would permit VW to perform calibration development work with the prospect of achieving the 3.4 gpm CO standard, I find that VW has failed to provide information sufficient to enable me to determine whether effective emissions control technology is available to enable the 1.46L/1–V engine family to meet the 3.4 gpm CO standard in the 1981 model year.

VW also has alternative technology capable of meeting the 3.4 gpm CO standard for the vehicle model scheduled to use its 1.46L/1–V engine. The 1.7L/FI engine is capable of meeting the statutory CO standard [34] and is capable of being substituted in the vehicle model scheduled to use the 1.46L/1–V engine.[35]

VW claimed that the 1.7L/FI engine version of this model is not an acceptable alternative to the 1.46L/1–V engine version because of cost and fuel economy penalties associated with the 1.7L/FI version.[36] VW asserted that because of the changed market conditions since my denial of the waiver request for its 1.6L carbureted engine family, it is no longer able to sell all of the 1.7L/FI models it could produce at the higher cost associated with the 1.7L/FI version of this model. VW, therefore, claimed it would sell fewer vehicles [37] than it otherwise planned if it were unable to market the 1.46L/1–V version of this model.

However, even considering costs and fuel economy, I have determined that VW still can competitively market vehicle models otherwise scheduled to use the 1.46L/1–V engine by substituting the 1.7L/FI alternative. As I stated in earlier waiver decisions, Congress probably envisioned that some cost, fuel economy or driveability penalties would be associated with technology capable of meeting the 3.4 gpm CO standard.[38]

VW still can market the vehicle model in question with alternative effective emissions control technology acceptable to a great majority of potential customers of the 1.46L/1–V version.[39]

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[23] 43 FR 47272, 47276 (October 13, 1973).

[24] See 44 FR 53376, 53385 (September 13, 1979); 44 FR 69416, 69427 (December 3, 1979); 45 FR 7122, 7123, (January 31, 1980); and 45 FR 37360, 37363 (June 2, 1980) (discussing the methodology used for analyzing available emission data in light of the applicable statutory criteria).

[25] App. A, section V. VW's 1.6L/FBC engine family previously denied a waiver employed a lambda-sensor closed-loop feedback carburetor, pulse-air injection, and a dual bed catalyst instead of the open-loop system used on its 1.46L/1–V engine. VW was denied a waiver for its 1.6L/FBC engine family in September 1979. However, the low-mileage emission data supplied by VW covered a testing period of only 2 months (March and April 1980). In addition, the components employed on the 1.46L/1–V engine/emissions control system were originally designed to meet much higher standards.

[26] VW supp. submission, June 1980, p. 24.

[27] App. A, sections IV, V, IX.

[28] App. A, sections IX.

[29] App. A, section V, IX.

[30] App. A, section IX.

[31] See, e.g., my decision regarding the Toyota 88.6 CID engine family, 44 FR 53376, 53380, 53398 (September 13, 1980).

[32] See, e.g., my decision regarding the AMC 151 CID engine family, 45 FR 7122, 7124, (January 31, 1980).

[33] App. A, section V.

[34] App. A, section V.

[35] June 20, 1980 Transcript, p. 54.

[36] VW claimed that because of the differences in the costs associated with producing these two engine families, it could price the 1.46L/1–V engine version at $225 less per vehicle. June 20, 1980 Transcript, p. 12. Development data on VW's 1.46L/1–V engine version using certain calibrations showed a 1.4% fuel economy improvement over official EPA test data on VW's 1.6L/FI engine version. App. A, section VIII.

[37] VW estimated that it would sell about 15,000 to 18,000 fewer gasoline powered vehicles in the 1981 model year if it did not market the 1.46L/1–V engine family. VW supp. submission, July 1, 1980, p. 3. Cf. Transcript of Proceedings, July 12, 1979, p. 58. However, the only substantiating information VW submitted indicated that substituting the higher-priced fuel-injected vehicles could lead to a sales decline of 10% in the number of sales originally planned for its lower-priced 1.46L/1–V carbureted model, or about 3,000 to 7,000 sales lost. App. A, section VI (based upon VW's sales projections for its 1.6L/FBC model (Transcript of Proceedings, July 12, 1979, p. 34) and EPA estimates of 1980 sales of the 1.46L carbureted model).

[38] See, e.g., 44 FR 53376, 53387 (September 13, 1979).

[39] As stated in footnote 36, *supra*, VW has projected sales losses ranging from 3,000 to 18,000 units. This compares with 1980 (EPA estimated) sales of about 150,000 vehicles of all Rabbit models. VW supp. submission, pp. 3, 4. App. A, section VI. however, although total U.S. sales of all manufacturers have been declining, VW has been able to maintain or increase its 1980 production and

Footnotes continued on next page

VW could recoup at least some of its claimed decrease in projected sales through increased sales of the diesel engine versions of this vehicle model and other models as well.[40]

No other considerations of costs, driveability, or fuel economy offer a basis for altering my conclusion that VW has failed to establish that effective emissions control technology is not available for models scheduled to employ its 1.46L/1–V engine family.[41] VW did not raise driveability as an issue, and did not provide any information to support claims based upon this factor.[42] In addition, VW has not established any cost, driveability, or fuel economy differences between the 1.46L/1–V engine covered by this waiver request for a 7.0 gpm interim CO standard and a system it would need to enable its 1.46L/1–V engine family to meet the 3.4 gpm CO standard because VW has not supplied sufficient information indicating what modifications, if any, it might use to improve the capability of that engine family to meet the 3.4 gpm CO standard in the 1981 model year.

B. *Protection of Public Health*

According to the express terms of the statute, there is no need for me to determine whether waiver applications covering engine families for which applicants failed to establish the unavailability of effective control technology (considering costs, driveability, and fuel economy) meet any of the remaining statutory criteria in order for me to deny these applications. The Act requires me to deny waiver applications where an applicant has failed to meet any one of the criteria, regardless of whether such applicant could meet the remaining criteria. Nevertheless, I will address some of the remaining criteria briefly as I have done in the eight previous waiver decisions.

Section 202(b)(5)(C) if the Act states that before I grant a waiver covering a given engine family, I must find that protection of the public health does not require attainment of a 3.4 gpm CO standard by the vehicles of the engine family receiving the waiver.[43]

While waiving the 1981 statutory CO standard for the engine family here arguably would not significantly affect the public health, noticeable increases in ambient CO levels could result from granting waivers industry-wide.[44] In light of the fact that industry-wide waivers would not be protective of the public health, it is reasonable to grant waivers covering only that portion of the industry consisting of engine families for which I have determined that effective control technology, considering costs, driveability, and fuel economy, is not available (presuming these families also meet the remaining statutory criteria).[45]

C. *Essential to the Public interest or to the Public Health and Welfare*

Before I may grant a waiver request, section 202(b)(5)(C)(i) of the Act requires that I determine that granting the waiver is essential to the public interest or the public health and welfare.[46]

I have determined that it is not essential to the public interest to grant a waiver to the VW 1.46L/1–V engine family where the applicant has failed to establish that this engine family is incapable of meeting a 3.4 gpm CO standard or is likely to incur significant risks associated with marketing available alternative technology which is capable of meeting that standard. VW has not established that the costs (or other penalties) involved are so substantial as to present a significant risk to the waiver applicant's ability to produce and competitively market vehicles of that engine family, or vehicles generally.[47]

In this case, denial is consistent with Congress' legislative intent to apply waivers only in those instances where I have determined, among other things, that effective control technology is unavailable and the granting a waiver is essential to the public interest.[48] Congress did emphasize the granting of waiver requests to assist in deploying new technology.[49] However, as I concluded in my previous denial of VW's 1.6L carbureted engine family,[50] it is highly unlikely that absent other extenuating circumstances Congress intended the CO waiver provision to accommodate a manufacturer, like Volkswagen, which can market a model meeting the 3.4 gpm CO standard using available technology, but which wants to market the same model using alternative technology which it already has marketed for several years and which is generally less effective technology.

D. Risks in Determining Available Technology

In *International Harvester Co.* v. *Ruckelshaus*,[51] the United States Court of Appeals for the District of Columbia Circuit reviewed the Administrator's decision to deny manufacturers' requests for a one-year suspension (from 1975 to 1976) of the effective date of the statutory hydrocarbon (HC) and CO standards mandated by the 1970 version of the Act. The court stated, among other things, that the Administrator should have considered the risks associated with the possibility of erroneously granting or denying those requests. The court indicated that the Administrator should balance the economic costs (in terms of jobs and misallocated resources) possibly associated with an erroneous or only

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sales of its Rabbit vehicle model using several different engine versions. VW has, therefore, been able to maintain or increase its market share in a difficult market period. For example, VW U.S. Rabbit production for 1980 is now reported to be about 24,000 units more than for the same period in 1979. (*Automotive News*, August 18, 1980, p. 55). VW has had to employ overtime shifts to keep up with production demands of the Rabbit models (Id., May 12, 1980, p. 39) while maintaining relatively lean inventory stock backlog of 21 to 39 days compared to an average figure of 72 days for all U.S. manufacturers (Id., August 18, 1980, p. 1). In addition, although VW has had some months in 1980 where sales were slightly lower than the same months in 1979, VW has achieved higher sales to date for the 1980 model year than in the same period in 1979 (Id., July 14, 1980, p. 46) and has increased it share of the U.S. market (Id., August 18, 1980, p. 55). VW's financial condition also contrasts sharply with that of other U.S. automobile manufacturers. Where the other U.S. manufacturers have suffered huge quarterly losses (*Wall Street Journal*, July 30, 1980, p. 1) within the last two quarters, VW has suffered only a slight decline in profits. (*Automotive News*, July 21, 1980, p. 29; May 12, 1980, p. 8.)

[40] June 20, 1980, Transcript, pp. 34–35.

[41] App. A, sections VI, VII and VIII.

[42] VW did state that the driveability of the 1.6L/FI version is slightly better than that of the 1.46L/1–V version, which it nevertheless termed acceptable. June 20, 1980, Transcript, p. 53.

[43] These criteria are found in section 202(b)(5)(C) of the Act. For discussion regarding these criteria in earlier waiver decisions, see 44 FR 53376, 53378 (September 13, 1979); 44 FR 69416, 69420 (December 3, 1979); 45 FR 7122, 7126 (January 31, 1980).

[44] VW argued that granting a waiver to this engine family would have an insignificant impact on air quality especially considering VW's portion of total projected U.S. sales in the 1981 model year. VW App., section 2.1. For further discussion concerning these contentions, see the first decision, 44 FR 53376, 53381, and Appendix B at 44 FR 53402–53407 (September 13, 1979).

[45] I discussed the ambient air quality effect of granting CO waivers in each Appendix B in two previous decisions, 44 FR 53376, 53402–53407 (September 13, 1979) and 44 FR 69416, 69456–69462 (December 3, 1979).

[46] Previous decisions discussed more fully the public interest and public health and welfare effects of engine families denied waivers. 44 FR 53387, 44 FR 69429 (September 13, 1979 and December 3, 1979).

[47] This point was discussed in the public interest analysis section in previous decisions regarding engine families denied waivers. 44 FR 53376, 53385 (September 13, 1979); 44 FR 69416, 69430 (December 3, 1979); 45 FR 7122 (January 31, 1980); 45 FR 7914 (March 19, 1980). Appendix A contains a closer examination of these penalties. App. A, section V–IX. See also, 44 FR 53376, 53385, 53386 (September 13, 1980). Section III (D), infra, presents a more detailed discussion of my consideration of the risks at issue.

[48] See 44 FR 53376, 53377 (September 13, 1979).

[49] 123 CONG. REC. § 13703 (August 4, 1977) (Remarks of Senator Muskie).

[50] 44 FR 53376, 53387 (September 13, 1979).

[51] 478 F.2d 615 (D.C. Cir. 1973). For further discussion of this case, see 44 FR 53376, 53388 (September 13, 1979).

partially accurate denial versus the possible environmental benefits lost through an erroneous grant. Even though the health risks associated with erroneous grants in the proceedings at hand may not be great, the risks associated with erroneous denials (which do not involve health considerations) also are limited significantly.

The information in the record indicates that VW has not demonstrated an adequate likelihood that a waiver denial based upon my conclusions here would be erroneous or partially accurate. Even if VW's continued development work established that the 1.46L/1–V carbureted engine could not meet the 3.4 gpm CO standard, VW still has not demonstrated that the risks presented by a denial require a waiver grant. The risk VW identifies that may cause a waiver denial (which is based on a conclusion that effective control technology is available) to be only partially accurate[52] is the risk that sales of this vehicle model using the alternative 1.7L/FI engine version will not replace all of the projected sales of its 1.46L/1–V version.[53]

The information VW provided indicates that sales of the 1.7L/FI version could substitute for the great majority of the 1.46L/1–V sales otherwise projected by VW. Although VW may not replace all of the potential sales of its 1.46L/1–V engine version with sales of its 1.7L/FI version, it could also compensate part of a decline in potential sales through an increase in the sales of the diesel powered version of this model,[54] thus further limiting any potential inaccuracy of a waiver denial here.

Moreover, VW did not establish that any partial inaccuracy would result in any significant adverse consequences to VW or to the public. I have concluded that even if my denial here were partially inaccurate, it would not present any threat to VW's viability as a manufacturer.[55] VW has failed to establish that the adverse consequences resulting from realizing fewer sales than it originally planned would be so significant as to merit altering my determination here, considering costs, fuel economy and driveability.

VW did claim generally that a waiver denial could affect adversely its ability to expand in the U.S. automobile market, and thus affect its plans to build a new production plant in Sterling Heights, Michigan, which could employ about 5,000 workers.[56] However, VW gave no substantiation of how or to what extent a waiver denial would be likely to affect its decision to build that plant. Moreover, any decline in projected sales which VW experiences as a result of an inability to market its 1.46L/1–V engine family in the 1981 model year will be limited to only one engine family and for only one model year, thus limiting the potential impact.

This contrasts with the situation in the *International Harvester* suspension decision in which EPA's Administrator had to make a judgment regarding the ability of the industry as a whole to produce cars for the public generally.[57] In light of these counter-balancing considerations, and in light of Congress' expressed intent to afford a statutory waiver only in exceptional circumstances rather than on an across-the-board basis, I have concluded that it is appropriate to deny waiver applications insofar as they cover engine families for which the manufacturer has failed to establish that effective control technology, considering costs, driveability, and fuel economy, is not available.

IV. Conclusion

I have determined that VW has failed to provide information sufficient to establish that effective emissions control technology, considering costs, driveability, and fuel economy, it not available to enable the vehicle model scheduled to use its 1.46L/1–V engine family to meet the 3.4 gpm CO standard in the 1981 model year. Therefore, I must deny the waiver request for this engine family.

Dated: August 28, 1980.

Barbara Blum,

Acting Administrator.

Appendix A.—Summary of Technological Capability

Contents

I. Introduction

The exhaust emission standards for 1981 and later model year light-duty vehicles are currently 0.41 gram per mile HC, 3.4 grams per mile CO, and 1.0 gram per mile NOx. Section 202(b)(5)(A) of the Clean Air Act, as amended, 42 U.S.C. 7521(b)(5)(A) provides the opportunity for manufacturers to request a waiver of the 3.4 grams per mile CO standard to 7.0 grams per mile during model years 1981 and 1982.

The applicant being considered in this document is Volkswagenwerk AG, hereafter referenced as VW. This is the second time a waiver request has been considered by EPA from VW. VW is requesting a waiver of the statutory CO standard for model year 1981 vehicles using 1.46 liter engines equipped with open-loop Solex Carburetors. These engines will only be installed in Rabbit vehicles with manual transmissions [5 at 1].[1]

This appendix deals with the technological capability of VW to meet the 1981 CO standard of 3.4 grams per mile. This appendix relies on three previous technical appendices, particularly for explanation of the basic concepts of the standard Monte Carlo simulation. These appendixes are:

1. Appendix B, Technical Appendix, to the Decision of the Administrator on Remand for the United States Court of Appeals for the District of Columbia Circuit, April 11, 1973.

2. Appendix A, Technical Appendix, to the Decision of the Administrator In re: Applications for Suspension of 1976 Motor Vehicle Exhaust Emission Standards, July 30, 1973.

3. Appendix A, Techincal Appendix, to the Decision of the Administrator In re: Applications for Suspension of 1977 Motor Vehicle Exhaust Emission Standards, March 5, 1975.

This appendix relies on reference 12 for discussion of the Modified Monte Carlo simulation used in this appendix. As indicated in Section 202(b)(5)(C)(iii) of the Clean Air Act, the technological feasibility determination is based on the consideration of technological capability, cost, driveability, and fuel economy. This appendix contains discussion of each of the above topics.

II. Summary of Technological Capability

Table II–1 summarizes the capability of the applicant manufacturer to meet the 1981 emission standards. The standards considered in these tables are 0.41 HC, 3.4 CO, 1.0 NOx.

A guide to the summary table is as follows. The first column lists engine displacement. The "as received" column refers to the emission data submitted by

[52] Cf., 45 FR 53400, section III A(2) (August 11, 1980).

[53] See Transcript, June 20, 1980, p. 34.

[54] See e.g., Transcript, June 20, 1980, p. 33.

[55] Cf, my decisions regarding Chrysler and Ford, where viability of the manufacturer was a concern, and thus the scope of the potential impact on the public, in terms of lost opportunities for jobs, suppliers, etc., was much greater. 45 FR 17914 (March 19, 1980), 45 FR 53400 (August 11, 1980).

[56] VW supp. submission, pp. 3, 4. June 20, 1980 Transcript, pp. 33–35.

[57] See also discussion of the *International Harvester* case in two previous decisions. 44 FR 53376, 53387 (September 13, 1979); 44 FR 69416, 69429 and 69430 (December 3, 1979).

[1] The abbreviated notation [W at Y] means reference number W from the references section of this document at page number Y.

the manufacturer. "Improvements" refer to the projected technological improvements (factors) applied to the data submitted by the manufacturer.

The "no data" category is an abbreviated notation for the lack of acceptable data to perform EPA's established technological analysis as referred to in EPA's published CO waiver guidelines. The applicant has known for about six years what sort of data is necessary for EPA to make a determination under its established methodology whether or not a given vehicle would be projected to pass or fail a set of standards. Unfortunately, in some cases there was a lack of useable data for vechicles using specific engines. This effectively precluded EPA from making a pass/fail determination for those vehicles through the established methodology. In these cases the vehicles using these engines are called "no data", and no pass/fail determination was made.

Table II-1.—*Applicant: Volkswagen*

Engine	Pass as received?	Pass with improvement?
1.46L-1V	No data for model year 1981. No waiver requested for model year 1982.	N/A [1]

[1] N/A means not applicable or that no hardware improvement factors were applied to these vehicles.

III. Statistical Treatment of the Data

The standard Monte Carlo methodology would have been used for the analysis of prototype durability vehicles in this appendix if acceptable data had been available. No changes have been made in the standard Monte Carlo methodology since its last use in a technical appendix. This methodology, which is the foundation for the Modified Monte Carlo methodology for certification vehicles has been discussed in three previous technical appendixes:

1. Appendix B, Technical Appendix, to the Decision of the Administrator on Remand for the United States Court of Appeals for the District of Columbia Circuit, April 11, 1973.

2. Appendix A, Technical Appendix, to the Decision of the Administrator In re: Applications for Suspension of 1976 Motor Vehicle Exhaust Emission Standards, July 30, 1973.

3. Appendix A, Technical Appendix, to the Decision of the Administrator In re: Applications for Suspension of 1977 Motor Vehicle Exhaust Emission Standards, March 5, 1975.

IV. Factors

With respect to the vehicle emission data submitted by the manufacturers for EPA analysis, vehicles are often run and tested over durability mileage accumulation schedules without using the best technology that is available to the manufacturer for certification in the 1981 or 1982 model years. There are many reasons why this occurs. First, such technology may have simply not been available in quantity when fleets of vehicles began mileage accumulation.

Second, all vehicles submitted for EAP staff analysis may not have been specifically designed for the 1981 and 1982 Federal emission standards. Also, the manufacturer may wish to maintain some technologies (with known durability) in reserve if their low mileage testing indicates that such technology may not be needed for compliance with the target emission standards. In addition, technology may not appear on durability vehicles because the manufacturer has made a decision that the technology would be too costly for production vehicles.

Factors which have previously been developed, but not used in the following analysis include factors for:

- Warm up catalysts for 3W catalyst or 3W+OC systems.
- Deletion of power enrichment.
- Use of insulated or dual-walled exhaust pipes.
- Use of exhaust port liners.
- Use of throttle body fuel injection.
- Use of multiple point fuel injection.

No factors were utilized in this particular analysis of data from Volkswagen for two reasons. First, Volkswagen has not provided durability data on either certification or prototype vehicles designed for compliance with a 0.41 HC, 3.4 CO, 1.0 NO_x standard. Second, calibration efforts are in such an early stage at VW for this engine that effects of emission control systems changes cannot yet be evaluated fully.

V. Discussion VW's Technical Capability

This section will discuss all vehicles which (1) were submitted by the applicant and (2) also are acceptable for input into either the standard Monte Carlo simulation or the Modified Monte Carlo analysis for certification vehicles. Acceptable for input means that (1) the vehicle is a durability vehicle which has accumulated a minimum of 20,000 miles with the same major emission control components and (2) a minimum of four valid 1975 FTP tests have been conducted on the vehicle.

Details of the pass/fail determinations in section II are presented here. To pass the 1981 and 1982 emission standard of 0.41 HC, 3.4 CO, 1.0 NO_x, the probabilities of passing each individual pollutant must be greater than or equal to 80% in either the standard or Modified Monte Carlo. If the probability of passing only HC, for example, is less than or equal to 79%, the vehicle is projected to fail—even if the probabilities of passing the CO and NO_x standards greatly exceed the 80% cut point. For completed 1981 model year certification vehicles, pass/fail is determined by a comparison of their calculated 4,000 mile and 50,000 mile results to the standard.

This is the second CO waiver application received from VW. In their current application VW has requested a CO waiver from 3.4 to 7.0 grams/mile for their vehicles using 1.46 liter engines with open loop, one venturi (1V) carburetors for 1981. In their previous application, they requested a waiver for vehicles using feedback carburetor-equipped 1.6 liter engines for 1981 and 1982. The previous application was denied for reasons detailed in reference 8.

VW's proposed emission control system for the 1.46 liter engine in model year 1981 includes the following components [1 at 18]:

1. Solex single venturi, open loop carburetor.
2. Pulse air injection system with two reed valves.
3. Monolithic oxidation catalyst: diameter—4.66 inches; length—6 inches; density—300 cells per square inch.
4. Ported EGR.

This emission control system is considered to be somewhat less than one of the best examples of state-of-the-art technology by the EPA technical staff. This system is less effective in controlling emissions than the closed loop systems which have been developed by other manufacturers *and by VW* for other engines. Table V-1 lists the development vehicles which were included in VW's CO waiver application. This table indicates that none of the vehicles were suitable for Monte Carlo analysis.

At the public hearing, VW stated that they had no durability data for their proposed 1981 model year configuration [1 at 86]. Additionally, VW stated that they do not have any durability data on their model year 1981 candidate catalyst [1 at 103].

The EPA technical staff can only conclude that the 1.46 liter engine is a "no data" case because of VW's apparent failure to test (or report on) even a single vehicle equipped with the proposed model year 1981 control system for a minimum of 20,000 miles. Volkswagen did not provide any durability data for either certification or prototype vehicles designed for compliance with the 3.4 CO standard. Efforts have not been adequate to evaluate fully the effects of emission control calibration changes. The most recent of Volkswagen's durability vehicles (car number 449–534) was designed and calibrated for emission

standards of 0.41 HC, 7.0 CO, 2.0 NO_x. This was their 1980 certification durability vehicle. They also presented data on their 1979 certification vehicle which was designed and calibrated to meet standards of 1.5 HC, 15 CO, 2.0 No_x. Two development durability vehicles were tested in the 1978 calendar year [449–543, 449–544], and were probably also designed for the 1979 standards, in the opinion of the EPA technical staff.

Additionally, VW has already demonstrated the ability to certify the Rabbit model vehicle at a 3.4 CO standard. Table V–2 lists the certification test results for a model year 1980 vehicle. This vehicle was equipped with a 1.6 liter engine and fuel injection system instead of the 1.46 liter engine and an open loop carburetor.

There is some evidence that additional calibration efforts could enable VW to certify their PAIR/EGR/OC system in 1981. This is evident in the results of the VW certification fuel economy and emissions data vehicle 306–501 in the 1980 model year program. It certified at emission levels of 0.259 HC, 2.65 CO, 0.76 NO_x. This vehicle does not demonstrate compliance with the 3.4 CO standard because the CO and NO_x emissions of the corresponding 1980 model year 1.46 liter certification durability vehicle exceeded the statutory 1981 standards i.e., the 1980 durability car line crossed for CO and NO_x. The certification durability and data vehicles generally utilize nominally identical emission control components, however, differences usually exist between their calibrations. The emission levels of data vehicle 306–501 indicate that the emission control system of the 1980 model year 1.46 liter engine may have the potential of compliance with the 3.4 CO standard.

The calibration of the emission control systems is very important at the 3.4 CO level. It is recognized by the technical staff that systems more sophisticated and effective than VW's can also fail the 0.41 HC, 3.4 CO, 1.0 NO_x emission levels due to inadequate calibration development. Since the only calibration for this package which has been tested and reported by VW is apparently main jet size, other calibration efforts may need to be completed prior to evaluating VW's ability to comply with a 3.4 CO standard. Additionally, durability data must be accumulated using hardware and calibrations designed for the 1981 emission standards before a Monte Carlo analysis can be completed.

Table V-1.—*Development Vehicles in the VW Waiver Application for the 1.46-Liter Engine*

Engine displacement (liters) and VIN	Emission control system [1]	Entered in modified Monte Carlo?	If not entered in Monte Carlo—why?	Comment	Reference
1.46, 0177	EGR, OC, PAIR	No	<20,000 miles	Tested with various catalysts and main metering jets.	2 at 5.12, 5.13.
1.46, 0159	EGR, OC, PAIR	No	<20,000 miles	Tested with various catalysts and main metering jets.	2 at 5.13, 5.14.
1.46, 537	EGR, OC, PAIR	No	<20,000 miles	Catalyst Comparison test vehicle..	2 at 5.15.
1.46, 512	EGR, OC, PAIR	No	<20,000 miles	Catalyst comparision test vehicle..	2 at 5.15.
1.46, 0154	EGR, OC, PAIR	No	<20,000 miles	Evap. development vehicle	2 at 5.16.
1.46, 449–544	EGR, OC, PAIR	No	Not equuipped with proposed MY 1981 catalyst	Development vehicle SLS mileage dyno.	2 at 5.11.
1.46, 449–543	EGR, OC, PAIR	No	Not equipped with proposed MY 1981 catalyst	Development vehicle SLS mileage dyno.	2 at 5.10.
1.46, 439–734	EGR, OC, PAIR	No	Not equipped with proposed My 1981 catalyst	1979 cert. durability vehicle	2 at 5.8.
1.46, 449–534	EGR, OC, PAIR	No	Not equipped with proposed MY 1981 catalyst	1980 cert. durability vehicle	2 at 5.9.

[1] EGR Means Ported Exhaust Gas Recirculation, PAIR Means Pulse Air Injection System, OC Means Oxidation Catalyst.

Table V-2.—Final Certification Results of a 1980 Model Year VW Vehicle Using a 1.6-Liter Fuel-Injected Engine

[Vehicle ID. 283; exhaust family 37C]

Miles	HC	CO	NO_x
5,189	0.31	3.0	0.48
10,079	.28	3.1	.45
15,174	.27	2.8	.54
15,193	.29	1.5	.42
19,974	.25	2.5	.53
24,926	.26	2.3	.42
29,898	.28	2.8	.47
29,918	.24	2.3	.28
34,985	.25	2.5	.26
39,927	.30	2.9	.35
45,208	.23	2.5	.28
49,809	.22	2.4	.27
4k (calc)	.30	2.65	.53
50k (calc)	.23	2.4	.26
df (calc)	.79	.92	.50
df (effective)	1.0	1.0	1.0

VI. Cost Analysis

The costing methodology used here is essentially the same as that used in previous CO waiver decisions [12], [13 at 40030], [14 at 53400], [15 at 69450], [16 at 7133], [17 at 17915]. Responses to the EPA subpoena of August 8, 1979 enabled EPA to revised cost estimates of certain emission control devices, notably monolithic three-way and oxidation catalysts. The subpoena requested prices that suppliers charge the automobile manufacturers for emission control devices or systems.

Described below are estimates of cost to the consumer for compliance with 3.4 vs 7.0 CO (due to lead time problems for certain emission control devices, separate estimates are often necessary for 1981 and 1982). The changes in cost were calculated by individual engine size. These changes are based on the differences in emission control hardware between systems targeted to meet 7.0 CO, as described by each manufacturer in their applications and systems judged capable by EPA of meeting 3.4 CO, based on the Monte Carlo analysis results or successful certification of similar vehicles.

VW 1.46 Liter Carbureted Engine

As shown in Table VI–1, EPA did not find an increase in cost for VW's 1.46 liter engine to achieve a 3.4 CO standard compared to a 7.0 CO standard in model year 1981. The cost issue does not arise for engines which are labeled "no data" or "fail" in the Monte Carlo analysis.

VW stated in their application for waiver, ". . . effective control technology is not available for the 1981 model year which would allow the carbureted 1.46 liter engine to meet a 3.4 gram/mile CO standard" [2 at 0.2]. VW contends that without a CO waiver for the 1.46 liter engine in the 1981 model year, this carbureted engine could not be available to the consumer [2 at 0.2].

Table VI-1.—*Cost of Compliance With 3.4 v. 7 CO*

Engine	EPA cost estimate	VW cost estimate
1.46 liter with open-loop carburetor	[1] $0	([2])
1.7 liter with closed-loop fuel injection	0	0

[1] No data.
[2] VW contends that effective emission control technology is not available for the 1981 model year which would allow the open-loop carbureter equipped 1.46 liter engine to complying with 3.4 CO standard [2 at 0.2]. VW did not estimate the cost differential between meeting at 3.4 vs 7.0 CO standard with this engine.

VW has closed-loop fuel injected engine which can meet the statutory CO standard [4 at 2]. This fuel injected engine is available in the same model vehicle as the 1.46 liter engine.

Additionally, VW stated that sufficient capacity of closed-loop fuel injected engines is available to meet market demand if the waiver request were denied for the 1.46 liter engine [1 at 54].

VW stated, "If the waiver is granted, VW will price the carburetor engine approximately $225 lower than the fuel injected engine. . . ." [2 at 0.3]. VW submitted the following information which relates sales sensitively to vehicle price:

(1) $50 is approxmately 1% of the base price of the VW Rabbit which is the only model which will use the 1.46 liter engine.

(2) A 1% increase in the absolute price of this vehicle will result in a sales loss of 2% to 2½% [5 at 3].

These projections imply that a $225 price increase would result in a 9% to 10¼% sales loss. VW projected a sales loss in model year 1981 of 15,000 to 18,000 gasoline-fueled Rabbits if the carbureted engine were not available [5 at 4]. This sales loss projection was based upon both the price and projected fuel economy differentials between the carbureted engine and the close-loop fuel injected engine.

The EPA technical staff does believe that the closed-loop fuel injected engine will cost more than the open-loop carbureted engine and that, in general, vehicle price will influence sales. However, the 1.46 liter engine for which a CO waiver was requested has been judged a "no data" case which precludes a pass/fail determination. Without a pass/fail determination an estimation of the cost of compliance to a 3.4 CO standard can not be made because VW has not supplied information on a 3.4 CO system versus a 7.0 CO system.

VII. Driveability

The technological feasibility of meeting the 1981–1982 emission standards is, in part, determined by the applicant's ability to maintain acceptable driveability while attaining these standards.

VW did not contend that driveability constraints were an issue in their request for CO waiver. At the public hearing Mr. Gerhard Delf of VW stated the following concerning the driveability of the carbureted 1.46 liter engine and the model year 1981 closed-loop fuel injected engine:

"In general, I have to say that with the fuel injected engine, driveability during warm-up can be controlled better than with the carbureted engine. But both engines fulfill our requirements as far as driveability is concerned. But the fuel injection does it better, warm-up driveability." [1 to 53]

The EPA technical staff concludes that VW has not shown driveability to be a crucial factor in their ability to meet a 3.4 CO standard.

VIII. Fuel Economy

VW did not address the issue of any possible fuel economy influence associated with compliance to a 3.4 CO standard versus a 7.0 CO standard or the open-loop carbureted 1.46 liter engine. VW claims the carbureted engine cannot meet a 3.4 CO standard [2 at 0.2]. VW stated at the public hearing, "* * * the only remaining possibility to offer a carburetor Rabbit for model year 1981 is to certify the Solex open-loop carburetor concept. This is only possible if a waiver is granted". [4 at 4]

The closed-loop fuel injected Rabbit can meet the 3.4 CO standard [4 at 2]. Thus, VW contends that without a waiver for the carbureted 1.46 liter engine only the closed-loop fuel injected version of the Rabbit could be certified for model year 1981. VW stated at the public hearing, "* * * between a carburetor and fuel injection, we would say the carburetor has the better fuel economy, however, assuming the same displacement and the same transmission-axle combination." [1 at 58] VW further qualified the preceding statement by stating that equal emissions were *not* assumed [1 at 58, 59].

Table VIII–1 lists the city fuel economy for both a closed-loop fuel injected 1.7 liter Rabbit which is certified at the 3.4 CO standard and an average fuel economy value from development open-loop carbureted 1.46 liter Rabbits. The carbureted development vehicles have an average fuel economy advantage of 1.4 percent compared to the fuel injected vehicle. However, the emissions of this fuel injected vehicle were markedly less than any of the development vehicle data used for the fuel economy comparison. The fuel injected vehicle was equipped with an engine of approximately 16 percent larger displacement. Using a sensitivity coefficient of Avg. $S_c = -.589$, which means percent change in fuel economy per percent change in displacement, one can estimate the fuel economy of a 1.46 liter fuel injected engine [15 at IV–9]. The city fuel economy is 8.2 percent greater than the carburetor version.

Table VIII–1.—*VW Fuel Economy Data*

Vehicle description	EPA city mpg
1981 Model Year Emission Data Vehicle No 648–81 Rabbit 1.7 L, Fuel Injection, M–4	27.8
Estimated Fuel Economy for 1.46 L, Fuel Injected Package	30.5
1981 Model Year Development Data Rabbit 1.46 L, Carburetor, M–4	[1]28.2

[1] Average of data items 82, 84, 90, 92, 96 and 98 in reference No. 3. These data are inclusive of all development tests submitted which utilized VW's first choice calibration (130 jet and EXP catalyst).

In conclusion, the EPA technical staff has no basis to believe that the fuel economy of the carbureted 1.46 liter engine will be adversely impacted by compliance with a 3.4 CO standard compared to a 7.0 CO standard because VW did not supply information on these systems. Furthermore, the fuel economy differential between the fuel injected Rabbit which is certified at the 3.4 CO standard and the development data for the carbureted Rabbits is slight.

IX. Lead Time Considerations

VW requested a CO waiver for the open-loop carbureted 1.46 liter engine for only the 1981 model year [2 at 1.5]. VW intends to essentially carry over the 1980 model year 1.46 liter engine and emission control system with some modifications to provide reduced CO, NOx and evaporative emissions [2 at 1.5]. The decision to offer the 1.46 liter engine in 1981 was made at some time after VW was denied a CO waiver for a 1.6 liter closed loop carbureted engine [1 at 54]. The date of the 1.6 liter engine waiver denial was September 5, 1979 [8]. Additionally, the open-loop Solex carburetor concept which the applicant engine incorporates will be replaced in model year 1982 by a closed-loop Carter carburetor [2 at 4.2, 4.3].

At the public hearing, VW summarized their leadtime situation in the following statement:

"At this point, no leadtime is available to pursue further exploration of concepts which will meet the 1981 statutory CO emission standard. In fact, design of the Solex open-loop concept is now fixed. Even though the certification process has begun, we are seriously behind schedule and will have difficulty meeting the already delayed December 1980 start of production date established to satisfy market demands." [4 at 4].

It appears from the 1.46 liter engine CO waiver application that the majority of development efforts were expended testing various combinations of main metering jets and catalysts on two otherwise production vehicles. These tests were perfomed mainly in March and April of 1980 [14 at 2 thru 5].

The proposed catalyst for model year 1981 has a larger substrate than the production model year 1980 catalyst. VW stated this larger substrate reduced the exhaust backpressure which, in turn, provided increased oxygen from the pulse air injection system [5 at 21]. The ported EGR valve which is used on the 1.46 liter engine *does not* sense backpressure [1 at 18]. Therefore, a reduction of backpressure will reduce the the EGR flow rate unless the EGR valve is recalibrated.

VW stated that "* * * we did not do any changes in EGR between model year 1980 and model year 1981." [1 at

50]. They also said "The EGR system is optimized as it presently is * * *" [1 at 50]. However, no data was presented which indicated that VW had performed any testing to verify that EGR calibrations were indeed optimized with the proposed model year 1981 calibrations.

VW has not made any efforts to optimize the spark timing calibration for model year 1981. At the public hearing, VW claimed a development lead time problem to optimize spark and EGR calibrations. VW said, "It is usually, according to our experience, about a two year development process to optimize spark and EGR for one given fuel system for a given set of standards." [1 at 93].

The EPA technical staff believes spark and EGR optimization could be accomplished in much less than two years, especially for an engine which has been in production for several years.

Another area which apparently has not received much development work is the carburetor calibration. VW did test a range of main metering jets, however, no test results were reported for other carburetor calibration parameters. Areas which could have been tested include, but are not limited to; idle system, idle-main transition system, and choke. Changes in these areas have the potential to reduce CO emissions and usually have fairly short lead time requirements.

In conclusion, the EPA technical staff agrees with VW that insufficient lead time is available for model year 1981 to develop new emission control concepts for the 1.46 liter engine. However, it appears evident that several important calibrations parameters of the proposed 1981 model year control system which have the potential to reduce CO emissions could be implemented within the present lead time constraints. Finally, without adequate data to perform a pass/fail analysis it is not possible to determine what changes, if any, would be required for the 1.46 liter engine to comply with a 3.4 CO standard.

1. *Transcripts of Proceedings, United States Environmental Protection Agency, Public Hearing on Volkswagenwerk for Waiver of the Effective Date of the 1981 Emission Standard for Carbon Monoxide,* Washington D.C., June 20, 1980, Neal R. Gross Court Reporters and Transcribers.

2. *Application for Waiver of the 1981 CO Emission Standard for Light Duty Vehicles,* Volkswagenwerk AG, May 1980.

3. Letter and enclosures to Mr. William Heglund (EPA) from Mr. Wolfgang Groth (VW) dated June 18, 1980.

4. Opening Statement of Mr. Karl-Heinz Neuman (VW), June 20, 1980.

5. Letter and enclosures to Mr. William Heglund (EPA) from Mr. Wolfgang Groth (VW) dated July 1, 1980.

6. Leroy H. Lindgren, *Cost Estimations for Emission Control Related Component-Systems and Cost Methodology Description* EPA Pub. #460/3-78-002, March 1978.

7. *Federal Register,* Vol. 45, No. 115, June 12, 1980.

8. *Federal Register,* Vol. 44, No. 179, September 13, 1979.

9. *Federal Register,* Vol. 44, No. 223, December 3, 1979.

10. *Federal Register,* Vol. 45, No. 22, January 31, 1980.

11. *Federal Register,* Vol. 45, No. 55, March 19, 1980.

12. *Federal Register,* Vol. 45, No. 107, June 2, 1980.

13. Letter to Mr. Joseph Whitehead (EPA) from Mr. Donald Colliver (Carter-Weber, Inc.), dated July 23, 1980.

14. Letter and enclosures to Mr. William Heglund (EPA) from Mr. Wolfgang Groth (VW) dated July 16, 1980.

15. *Passenger Car Fuel Economy: EPA and Road, A Report To The Congress,* U.S. Environmental Protection Agency, January 1980 Draft.

[FR Doc. 80-27431 Filed 9-8-80; 8:45 am]
BILLING CODE 6560-01-M

EXPORT-IMPORT BANK OF THE UNITED STATES

Privacy Act of 1974; Systems of Records; Annual Publication

The Privacy Act of 1974, 5 U.S.C. 552a(e)(4) requires that each Agency publish in the Federal Register at least annually a notice of the existing Systems of Records it maintains.

The Export-Import Bank of the United States last published the full text of its Systems of Records at 42 FR, pages 48077–48093, September 22, 1977.

The full text of the Export-Import Bank Systems of Records also appears in the Privacy Act Issuance, 1978, Compilation, Volume IV, pages 6886 and 1979 Compilation Volume IV, pages 2650–2665. These volumes may be ordered through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The following changes have been made to those Systems of Records:

The wording Civil Service Commission wherever it appears has been changed to read "OPM".

The wording "Privacy Access Request" wherever it appears has been changed to read "Privacy Act Request."

EIB–1 retention and disposal has been changed to read "if applicant selected for position, file maintained in OFP".

EIB–7 the word "grievance" has been deleted and "discrimination complaint" has been added wherever it appears.

EIB–12 retention has been changed to read "previous calendar year" and "present calendar year."

EIB–13 categories of individuals covered by the system has been changed to read "Eximbank past and present employees required to travel overseas in an official capacity who request an Official Passport."

EIB–21 is deleted in its entirety.

EIB–22 categories of individuals covered by the system has been changed to read "All current GS Eximbank employees who are not in the top step of their grade". Safeguard has been changed to read "locked cabinet and in a building that has a GSA contractor guard".

EIB–23 system location secondary various divisions or offices within the Bank has been deleted and "Payroll Office" has been added. Retrievability has been changed to "chronologically."

EIB–24 retention and disposal has been changed to read "while employed at Eximbank."

EIB–25 System Manager has been changed to "Vice President—Administration, EDP Center."

EIB–26 categories of individuals covered by the system has been changed to read "Eximbank employees, applicants and consultants". Retention and disposal has been changed to read "Investigative files destroyed:

1. If applicant declines employment;
2. Upon employee's departure; or
3. Upon consultant's completion of service."

EIB–29 system manager has been changed to read "Vice President—Administration, EDP Center."

EIB–31 retention and disposal should be changed to read "2 years from date of receipt." System manager has been changed to read "Office of Personnel."

EIB–39 categories of individuals covered by the system has been changed to read "Eximbank employees past and present who travel on official business and go to countries that require a visa to be applied to their Official Passport." Storage has been changed to read "file folder" and retention and disposal should read "previous calendar year and present calendar year."

EIB–40 storage has been changed to read "active in Kardex; inactive in boxes."

EIB–42 storage has been changed to read "bookbinders."

EIB–45 is deleted in its entirety.

Adrian B. Wainwright,
Vice President—Administration.
September 2, 1980.

EIB—1

SYSTEM NAME:

EIB Applicant File, SF–171's and resumes.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Primary: 811 Vermont Avenue, N.W., Washington, D.C. 20571.

Secondary: Various offices and divisions within the Eximbank.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have sent in their resumes and forms requesting employment with the Eximbank.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel qualification statement and employment history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

OPM.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For use whenever a vacancy becomes available and one is qualifed for said position. By officials and employees of the Eximbank in the performance of their official duties. By representatives of the OPM and by officials and employees of other components of Federal government and departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folders.

RETRIEVABILITY:

Alphabetically.

SAFEGUARDS:

Locked file cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

If applicant selected for position, file maintained in OPF.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Personnel, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031,Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Individual.

EIB—2

SYSTEM NAME:

EIB biographical sketches on Eximbank employees.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers and professionals of the Eximbank.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, place of birth, educational and work experience.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Eximbank personnel management practices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

By officials and personnel of the Eximbank for public appearance. By news media in connection with speeches, public appearance, newspapers, etc. By departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Maintained in binder books and file folders.

RETRIEVABILITY:

Alphabetically.

SAFEGUARDS:

Bookcases and desks and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Retained while employed by the Eximbank or until appointment expires.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Office, 811 Vermont Avenue, N.W., Washington;, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should by able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information matintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Individual and miscellaneous personnel forms.

EIB—3

SYSTEM NAME:

EIB Confidential Statement of Employment and Financial Interest.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Eximbank past and present employees above a certain grade level unless exempted by the Ethics Committee.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, title of position, date of appointment in present position, office or division, employment and financial interest, creditors, interests in real property and information requested of other persons, signature and date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Required by Section 402 of Executive Order 11222 dated May 8, 1965.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Reviewed by members of the Ethics Committee regarding conflicts of interest. By officials and employees of the Eximbank in the performance of their official duties and by other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folder.

RETRIEVABILITY:

Alphabetical.

SAFEGUARDS:

Locked cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contain a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Individual.

EIB—4

SYSTEM NAME:

EIB Driver's License file.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SF–46, U.S. Government Motor Vehicle Operator's Identification Card for issuance to those present and past employees authorized to drive an official Government car in the performance of their assigned duties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, card number, date issued, expiration date, signature of operator, sex, date of birth, color of hair, color of eyes, height, weight, birthplace, social security number, signature of issuing official, title, name and location of issuing unit.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

In accordance with FPM 930.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

By officials and employees of the Eximbank in the performance of their official duties. By the Department of Motor Vehicles, D.C. Police Department, Justice Department and insurance companies in the performance of their official duties. By other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folder.

RETRIEVABILITY:

Numerically.

SAFEGUARDS:

Locked desk drawer and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President—Administration, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contain a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Individual and the completion of EIB Form 74–2 and SF–47.

EIB—5

SYSTEM NAME:

EIB Earnings and Tax Statement.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eximbank past and present employees yearly earnings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, home address, gross earnings for the year, federal and state tax deductions for the year and marital status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Internal Revenue Service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used at the end of the calendar year by the Payroll Unit. By officials and employees of the Eximbank in the performance of their official duties. By representatives of the OPM, Comptroller General, Attorney General, Treasury and by officials and employees of other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File cabinet.

RETRIEVABILITY:

Alphabetical.

SAFEGUARDS:

Locked file cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer Controller, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Individual and payroll records.

EIB—6

SYSTEM NAME:

EIB Employee Records (relocation site).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Eximbank employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Service records cards, retirement deductions, bond balances, annual and sick leave balances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Vital Records Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records maintained for reference and backup for main records. By officials and employees of the Eximbank in the performance of their official duties. By employees and officials of other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Expandable envelope.

RETRIEVABILITY:

Alphabetically within the envelope.

SAFEGUARDS:

Locked safe file at relocations site.

RETENTION AND DISPOSAL:

Records are updated quarterly, and out-of-date records destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President—Administration, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Office of Personnel and Payroll Unit.

EIB—7

SYSTEM NAME:

EIB Equal Employment Opportunity, discrimination complaint.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eximbank employee filing a discrimination complaint.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and type of complaint.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10590, Government Employment Policy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

By persons of the Eximbank in the performance of their official duties. By Justice, OPM, duly authorized representatives of the complainant in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folders.

RETRIEVABILITY:

Alaphabetical.

SAFEGUARDS:

Locked file cabinet and a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

2 years after the case has been resolved.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President—Administration, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc.

Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Investigator, individual and employees of the division of office where the complainant was/is employed.

EIB—8

SYSTEM NAME:

EIB Financial Assistance Request for (under Federal Employee Training Act).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

EIB employees requesting financial assistance for training and text books.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Employees Training Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used as official authorization to justify payment for training expenses. By officials and employees of the Eximbank in the performance of their official duties and by GAO and other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Folders.

RETRIEVABILITY:

Alphabetical by period.

SAFEGUARDS:

Locked file cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer Controller and Office Services, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 822 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request"—and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Individual.

EIB—9

SYSTEM NAME:

EIB Financial Organization, Credit to Account (Checking).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

EIB employees complete when they want their salary check to be sent directly to a financial organization of their choice.

CATEGORIES OR RECORDS IN THE SYSTEM:

Employees application for deposit of salary check to the financial organization (checking) of their choice.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Treasury Department Fiscal Service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by the Treasurer Controller and his staff and officials and employees of the Eximbank in the performance of the official duties. By representatives of the OPM, Controller General, Treasury, financial institutions and by officials and employees of other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Filed in folders.

RETRIEVABILITY:

Alphabetical.

SAFEGUARDS:

Locked file cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Until employee cancels.

SYSTEM MANAGERS(S) AND ADDRESS:

Treasurer Controller, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Individual.

EIB—10

SYSTEM NAME:

EIB Financial Organization, Credit to Account (Savings).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

EIB employees complete when they want their salary check or a portion to be sent to a savings financial organization of their choice.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employees application for the deposit of salary check or a portion to be sent to

a savings financial organization of their choice.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Department of the Treasury, Bureau of Accounts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by the Treasurer Controller and his staff and officials and employees of the Eximbank in the performance of their official duties. By representatives of the OPM, Comptroller General, Treasury, financial institutions and by officials and employees of other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folder.

RETRIEVABILITY:

Alphabetical.

SAFEGUARDS:

Locked combination safe and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Until employee cancels.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer Controller, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Individual.

EIB—11

SYSTEM NAME:

EIB Garage Space Application.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

EIB employees and other employees in federal agencies within the area holding parking spaces in the building.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, license number, telephone number, make and license tag number of car, building location and room number and signature and date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Eximbank management practices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Maintained as the current list of current and potential garage space holders and alternaes. By officials and employees of the Eximbank in the performance of their official duties. By representatives of the GSA and insurance companies in the performance of their official duties and by officials and employees of other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folders.

RETRIEVABILITY:

Alphabetical.

SAFEGUARDS:

File cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Yearly update.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President—Administration, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable indentification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Individual

EIB—12

SYSTEM NAME:

EIB immunization request.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eximbank past and present employees who travel abroad on official business requiring immunization for such travel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and countries to be visited.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Eximbank management practices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

By officials and employees of the Eximbank in the performance of their official duties. By State Department, Health, Education and Welfare, and private physicians in the performance of their official official duties, and by officials and employees of other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE

File folder.

RETRIEVABILITY:

Chronologically.

SAFEGUARDS:

2 drawer unlocked file cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Previous calendar year and present calendar year.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President–Administration, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Individual.

EIB—13

SYSTEM NAME:

EIB Passport request file.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eximbank past and present employees required to travel overseas in an official capacity who request an Official Passport.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, title, approximate dates of travel, destination, purpose of travel and date of security clearance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Eximbank management practices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

By officials and employees of the Eximbank in the performance of their official duties. By State Department and embassies in the performance of their official duties and by officials and employees of other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folder.

RETRIEVABILITY:

Chronologically.

SAFEGUARDS:

2 drawer unlocked file cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President—Administration, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individuals should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Individual.

EIB—14

SYSTEM NAME:

EIB Payroll Certification.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All present Eximbank employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll summary.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Treasury Department, Bureau of Accounts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

By the Treasurer Controller and his staff and officials and employees of the Eximbank in the performance of their official duties. By representatives of the OPM, GAO, Justice in the performance of their official duties and by other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folder

RETRIEVABILITY:

Numerical.

SAFEGUARDS:

Combination safe and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Retained 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer Controller, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in

writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Time and attendance cards and personnel notification.

EIB—15

SYSTEM NAME:

EIB Payroll Change Slip, SF-1126.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eximbank present and past personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee payroll summary showing notification of basic pay change, data on unpaid absence, payroll change data and remarks.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

U.S. Civil Service Commission.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

By the Treasurer Controller and his staff and officials and employees of the Eximbank in the performance of their official duties. By representatives of the OPM, GAO, Comptroller General, Attorney General, Treasury and by officials and employees of other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folders.

RETRIEVABILITY:

By date of changes.

SAFEGUARDS:

Combination safe and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Maintained 2 years and then destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer Controller, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Office of Personnel and payroll records.

EIB—16

SYSTEM NAME:

EIB Payroll Coding Sheet, magnetic tape.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Eximbank past and present employees, except day laborers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Master payroll employee record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Eximbank management practices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

By officials and employees of the Eximbank in the performance of their official duties. By GSA, Justice, Treasury, GAO, Comptroller General and by officials and employees of other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Magnetic tape.

RETRIEVABILITY:

Pay period.

SAFEGUARDS:

Locked fire-proof safe and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

15 years.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer Controller, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Payroll Unit and related personnel files.

EIB—17

SYSTEM NAME:

EIB Payroll Information Employee.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All present and past Eximbank employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee payroll summary, i.e., name, social security number, marital status,

grade and step, annual hourly and overtime rate, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

GAO Policy and Procedures Manual for Guidance of Federal Agencies for controls over automated payroll system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

By officials and employees of the Eximbank in the performance of their official duties. By OPM, GAO, IRS, HUD, Department of Labor and by officials and employees of other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Filed in binders.

RETRIEVABILITY:

Numerically.

SAFEGUARDS:

Locked cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Retained 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer Controller, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individuals should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Office of Personnel and individual.

EIB—18

SYSTEM NAME:

EIB Payroll Listing.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eximbank past and present employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, net pay and check.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Treasury Department.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used as a check list to distribute pay check to employees. By officials and employees of the Eximbank in the performance of their official duties. By Treasury, GAO, Comptroller General, OPM and by officials and employees of other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folder.

RETRIEVABILITY:

By pay period.

SAFEGUARDS:

File cabinet in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Retained 2 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer Controller, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Time and attendance cards and related personnel forms.

EIB—19

SYSTEM NAME:

EIB Payroll Master Record.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All new Eximbank employees and changes to old employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee payroll summary, i.e., name, social security number, hourly rate, overtime rate, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

GAO Policy and Procedures Manual for Guidance of Federal Agencies Title 6 for controls over automated payroll system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used to enter new employees and making any changes effecting old employees. By officials and employees of the Eximbank in the performance of their offical duties. By Social Security, GAO, Comptroller General, IRS and by officials and employees of other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Binders.

RETRIEVABILITY:

Office or division.

SAFEGUARDS:

Locked cabinets in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Retained 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer Controller, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration 811 Vermont Avenue, N.W., Room 1031 Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly market "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Office of Personnel and individual.

EIB—20

SYSTEM NAME:

EIB Payroll Control Manual.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All new employees and present and past employees making deductions and pay changes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Control covering the biweekly payroll including such information as name, base pay and any deductions such as FICA, retirement, bond, insurance, health, charity, optional insurance and savings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

GAO Policy and Procedures Manual for Guidance of Federal Agencies for controls over automated payroll system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

By officials and employees of the Eximbank in the performance of their official duties. By OPM, Justice, IRS, Comptroller General and by officials and employees of other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folder.

RETRIEVABILITY:

According to pay period.

SAFEGUARDS:

Locked cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Retained 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer Controller, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Office of Personnel and individual.

EIB—22

SYSTEM NAME:

EIB Periodic Step Increase File.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current GS Eximbank employees who are not in the top step of their grade.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, social security number, current GS grade, current step of grade and date of next equivalent increase.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Eximbank management practices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PRUPOSES OF SUCH USES:

Used by Office of Personnel to insure all step increases are given at the correct time. By officials and employees of the Eximbank in the performance of their official duties. By OPM and by officials and employees of other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Cabinet.

RETRIEVABILITY:

Alphabetical by due dates.

SAFEGUARDS:

Locked cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

As long as employee is employed by the Eximbank.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President—Administration, Office of Personnel, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE;

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for infotmation as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope

clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Based on information contained in the official personnel file of each Eximbank employee.

EIB—23

SYSTEM NAME:

EIB Personnel Action, Notification SF–50.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Primary: 811 Vermont Avenue, N.W., Washington, D.C. 20571.

Secondary: Payroll office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personnel of the Eximbank.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, date of birth, grade, step, salary, location of job, FICA or retirement deductions, health and life insurance eligibility and effective date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

OPM.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

By officials and employees of the Eximbank in the performance of their official duties. By departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder.

RETRIEVABILITY:

Chronologically.

SAFEGUARDS:

Locked file cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Until employee is terminated or transfers.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President—Administration, Office of Personnel, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

From personnel records.

EIB—24

SYSTEM NAME:

EIB Personnel Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Primary: 811 Vermont Avenue, N.W., Washington, D.C. 20571.

Secondary: Various divisions and offices within the Bank.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present employees of the Eximbank.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, forms and anything that pertains to an individual assigned to an an office or division.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Eximbank management practices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by the supervisor of the offices or divisions for quick reference for the reassignment or promotion of their employees. By officials and employees of the Eximbank in the performance of their duties and by other agencies and departments in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Binders.

RETRIEVABILITY:

Alphabetical.

SAFEGUARDS:

Locked filing cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

While employed at Eximbank.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President—Administration, Office of Personnel, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Related personnel forms and from the individual.

EIB—25

SYSTEM NAME:

EIB Personnel Listing.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current Eximbank employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, grade, title, salary and next salary change.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Eximbank management practices.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used for staffing requirements, promotions and by officials and employees in the performance of their official duties. By other agencies and departments in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Loose leaf binders or file folders.

RETRIEVABILITY:

Alphabetically by office.

SAFEGUARDS:

Locked cabinet or desk drawer in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Each time a new listing comes out the previous one is destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President—Administration EDP Center, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Eximbank Data Processing Center and payroll records.

EIB—26

SYSTEM NAME:

EIB Personnel Security Records.

SECURITY CLASSIFICATION:

Confidential.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eximbank employees, applicants, and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel investigations of current and former employees including actual investigations, summary investigations from other Federal agencies, security forms and correspondence relating to security.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Personnel security records are maintained in order to determine the level of clearance Eximbank employees permitted regarding access to classified materials and meetings in accordance with Executive Order 10450. By officials and employees of the Eximbank in the performance of their official duties. By OPM, FBI and by officials and employees of other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folder.

RETRIEVABILITY:

Alphabetical.

SAFEGUARDS:

Combination security locked file cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Investigative files destroyed:

1. If applicant declines employment; 2. upon employee's departure; 3. upon consultant's completion of services.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President—Administation, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Investigations received from Federal investigative agencies and correspondence generated by other departments and agencies containing information from employers, references, schools, neighbors, police, credit agencies and other Federal investigative agencies.

EIB—27

SYSTEM NAME:

EIB Personnel Roster.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All present and past Eximbank employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Alphabetical listing of employees by name, home address and telephone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Eximbank management practices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by officials and employees of the Eximbank in the performance of their official duties. By officials and employees of other departments and

agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folder.

RETRIEVABILITY:

Alphabetical.

SAFEGUARDS:

Locked cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Each calendar year.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President—Administration, Office of Personnel, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individuals should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Employee official personnel file and individual.

EIB-28

SYSTEM NAME:

EIB Personnel Security Correspondence.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present Eximbank employees, applicants and terminated or transferred employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters of transmittal to OPM requesting an NAC or full field and memorandum to office and/or division heads regarding clearance. Letters of tansmittal returning file to OPM or other investigative agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Eximbank management practices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

By officials and employees of the Eximbank in the performance of their official duties and by officials and employees of other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folder.

RETRIEVABILITY:

Chronologically.

SAFEGUARDS:

Combination locked security cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

2 years, destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President—Administration, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Individual and various personnel forms.

EIB—29

SYSTEM NAME:

EIB Personnel Summary.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the Eximbank at the time period the record covers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, grade and division of all employees at the time period the records were kept.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Periodic requests from OMB, Congress, GAO, etc., for justifying additional personnel needs and productivity studies of the Bank.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

By officials and employees of the Eximbank in the performance of their official duties. By OMB, GAO, and by officials and employees of other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folder.

RETRIEVABILITY:

By fiscal year, by office.

SAFEGUARDS:

The cabinets in area accessed to authorized personnel and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Maintained for historical data.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President—Administration EPD Center, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Various payroll records.

EIB-30

SYSTEM NAME:

EIB Position Description File.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Primary:
811 Vermont Avenue, N.W., Washington, D.C. 20571.
Secondary:
Various divisions within the Eximbank.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are assigned to the different offices and divisions of the Eximbank.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, grade, title, location, series and description of duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

OPM.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by the officials and employees of the Eximbank in the performance of their official duties and other department and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Binder books.

RETRIEVABILITY:

By division or office.

SAFEGUARDS:

Locked file cabinet and in a building, that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President—Administration, Office of Personnel, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individuals should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Office of Personnel.

EIB-31

SYSTEM NAME:

EIB Referrals for Non-Career Assignments.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applications, personal resumes and personnel memoranda on individuals requesting non-career assignments.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal resumes, personnel memoranda and applications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

OPM.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For use whenever a vacancy becomes available to be filled by a non-career assignment. By officials and employees of the Eximbank in the performance of their official duties. By representatives of the Civil Service Commission, White House, Congress of the United States and by officials and employees of other components of the Federal government and departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folders.

RETRIEVABILITY:

Alphabetical.

SAFEGUARDS:

Locked file cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

2 years from date of receipt.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Personnel, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Individuals.

EIB—32

SYSTEM NAME:

EIB Retirement Record Cards.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Record maintained on every Eximbank employee paid by the computer system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, social security number and pay rates during employment by the Eximbank. Primary record is cumulative retirement deductions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

OPM requirement of all Federal agencies.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Updated for each salary change and yearly total of retirement deductions: Original sent to OPM when employees leave Eximbank. By officials and employees of the Eximbank in the performance of their official duties and by OPM and other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Steel file cabinet.

RETRIEVABILITY:

Alphabetical.

SAFEGUARDS:

Steel file cabinet with combination lock and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Retained until the employee leaves the Eximbank either by transfer to another agency, retirement or resignation.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer Controller, Payroll Unit, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individuals should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

SF–50 and payroll computer printout.

EIB—33

SYSTEM NAME:

EIB Savings Bond Authorization.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of Eximbank who have signed up to purchase bonds.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for the purchase of savings bonds.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Treasury Dept., Bureau of Accounts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For ordering bonds, changing inscription, allotment and beneficiary. Used by officials and employees of the Eximbank in the performance of their official duties. By Treasury, IRS, OPM, GAO, Controller General and other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File cabinet.

RETRIEVABILITY:

According to bond subscriber number.

SAFEGUARDS:

2 drawer horizontal file cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Maintained 1 year after termination.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer Controller, Payroll Unit, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Employee complete SF–1192.

EIB—34

SYSTEM NAME:

EIB Savings Bond File.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eximbank present and past employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee name, amount of bond and bond serial number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Eximbank management practices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used as a check list to distribute bonds to employees. By officials and employees of the Eximbank in the performance of their official duties. By IRS, Treasury, GAO, Comptroller General and other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folder.

RETRIEVABILITY:

By pay period.

SAFEGUARDS:

File cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

3 years and destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer Controller, Cash Control Unit, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Payroll Unit.

EIB—35

SYSTEM NAME:

EIB Tax Exemption Certificate.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Maintained on each present and past employee of the Eximbank.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, social security number and the number of withholding exemptions an employee claims on his/her taxes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

IRS regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used when a new employee enters employment or when a present employee wishes to make a change. By officials and employees of the Eximbank in the performance of their official duties. By OPM, Treasury, IRS, GAO, state governments and by other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File cabinet.

RETRIEVABILITY:

Alphabetically.

SAFEGUARDS:

Single drawer file and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

1 year after employee transfers, retires or resigns.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer Controller, Payroll Unit, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Individual.

EIB—36

SYSTEM NAME:

EIB Time and Attendance Card.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Eximbank present and past employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Number of hours worked, i.e., regular, overtime, compensatory time, holiday, night differential, leave taken, annual, sick, compensatory time, LWOP and other.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 6.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used to determine payment to all Eximbank employees on duty. By officials and employees of the Eximbank in the performance of their official duties. By OPM, GAO, Treasury, Justice, agent of an employee in connection with a grievance and by other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folder.

RETRIEVABILITY:

Alphabetical by division.

SAFEGUARDS:

Steel file cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer Controller, Payroll Unit, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Time and attendance files.

EIB—37

SYSTEM NAME:

EIB Travel Advance Application.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eximbank employee travelling on official business requesting travel advance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, agency, bureau/division, office, authorization number, date, address to where check should be mailed, signature of applicant, amount applied for, balance due on previous advance, signature of approving officer and date, appropriation number and any remarks.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

General Accounting Office.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Travelers making a request for an advance. By officials and employees of the Eximbank in the performance of their official duties. By GAO, Comptroller General, Attorney General, Treasury and by officials and employees of other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congessional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Cards.

RETRIEVABILITY:

Alphabetical.

SAFEGUARDS:

File box and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

4 years.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer Controller, Travel and Administrative Expense Unit, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administation, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Private Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Individual.

EIB—38

SYSTEM NAME:

EIB Travel Ledger.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons travelling on official business for the Eximbank.

CATEGORIES OF RECORDS IN THE SYSTEM:

Travelers name, travel order number, place travelling to, voucher number, accurals of expenses, payments broken into 2 parts (P.D. and carrier), and the balance of accurals for particular trip.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Eximbank management practices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To control accounting of travel expenses. By officials and employees of the Eximbank in the performance of their official duties and by GAO, and other departments and agencies in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES, AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Ledger.

RETRIEVABILITY:

Period basis.

SAFEGUARDS:

Cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Unit audited.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer Controller, Travel and Administative Expense Unit, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in

writing with the letter and evelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information mantained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Disbursement vouchers and related travel forms.

EIB—39

SYSTEM NAME:

EIB Visa Request File.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eximbank employees, past and present, who travel on official business and to to countries that require a visa to be applied to their Official Passport.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, title, passport number and approximate dates of travel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

State Department and regulations of foreign countries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by officials and employees of the Eximbank in the performance of their official duties and by State Department, embassies and by other departments and agencies in the performance of their official duties.

Disclosure may be to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder.

RETRIEVABILITY:

Chronological.

SAFEGUARDS:

2 drawer unlocked cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Previous calendar year and present calendar year.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President—Administration, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and evelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information mantained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Individual.

EIB—40

SYSTEM NAME:

EIB Service Cards (SF-7).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present employees of Eximbank.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, social security number, date of appointment or transfer, organization to which assigned, position title, position number, grade/step/salary, and date of separation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

OPM.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by personnel clerical employees in the processing of official personnel actions.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active in Kardex; inactive in boxes.

RETRIEVABILITY:

By organization for current employees, alphabetically for former employees.

SAFEGUARDS:

Locked cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President—Administration, Personnel Office, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individuals should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Officical Personnel Folder.

EIB—41

SYSTEM NAME:

EIB Training Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees who request training.

CATEGORIES OF RECORDS IN THE SYSTEM:

All information called for on Optional Form 170, including but not limited to, name, amount of current continuous

service, name of course, where taken, and the cost.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

OPM.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Is used by the employee to request training, by various levels of supervisors for recommendation, by the Office of Administration for approval, and by other officials and employees of Eximbank in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Bookbinder.

RETRIEVABILITY:

Alphabetically and by date.

SAFEGUARDS:

Unlocked file cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President—Administration, Personnel Office, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification. i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the sytem should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Employee.

EIB—42

SYSTEM NAME:

EIB Awards.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who have been nominated for any kind of award or who have submitted a suggestion under the Awards Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of the proposed awardee and all supporting information required to pass judgment on and to implement the award.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Eximbank management practice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by supervisors and others for appropriate review, by the Personnel Committee for approval, and by the Office of Administration for implementation.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Bookbinders.

RETRIEVABILITY:

Alphabetically and by date.

SAFEGUARDS:

Locked file cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President—Administration, Personnel Office, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification. i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Recommendations made by supervisors, suggestions submitted by employees, and minutes of actions by the Personnel Committee.

EIB-43

SYSTEM NAME:

EIB Positions and Incumbents, except attorneys, in Schedules A, B, and C positions.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present incumbents of positions in Schedules A, B, and C (other than attorneys).

CATEGORIES OF RECORDS IN THE SYSTEM:

Position description (including Optional Form 8), legal authorization for establishment of position, and the name of the incumbent.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Eximbank management practice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by the Personnel Office in maintaining record control over the filing of the cited positions. By officials and employees of Eximbank in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Bookbinder.

RETRIEVABILITY:

Numerically and alphabetically.

SAFEGUARDS:

Unlocked file cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President—Administration, Personnel Office, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Employee, OPM authorizations, and Official Personnel Folder.

EIB-44

SYSTEM NAME:

EIB Positions and Incumbents in GS-16, 17, and 18.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

811 Vermont Avenue, N.W., Washington, D.C. 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present individuals of the Eximbank assigned to positions at the GS-16, 17, and 18 level.

CATEGORIES OF RECORDS IN THE SYSTEM:

Position descriptions (including Optional Form 8), legal authority for the establishment of the position, and the name of the individual encumbering the position.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Eximbank management practice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by the Personnel Office in maintaining record control over the filing of the cited positions and by officials and employees of Eximbank in the performance of their official duties.

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Bookbinder.

RETRIEVABILITY:

Alphabetically.

SAFEGUARDS:

Unlocked file cabinet and in a building that has a GSA contractor guard.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President—Administration, Personnel Office, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

NOTIFICATION PROCEDURE:

Vice President—Administration, 811 Vermont Avenue, N.W., Room 1031, Washington, D.C. 20571.

RECORD ACCESS PROCEDURES:

Same as Notification. A request for information as to whether a Systems of Record contains a record pertaining to an individual and all requests for access to a record from the system shall be in writing with the letter and envelope clearly marked "Privacy Act Request" and stating full name and address of individual. For personal visits the individual should be able to provide some acceptable identification, i.e., driver's license, identification card, etc. Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above.

RECORD SOURCE CATEGORIES:

Employee, OPM authorizations, and Official Personnel Folder.

[FR Doc. 80-27380 Filed 9-8-80; 8:45 am]
BILLING CODE 6690-01-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies

AGENCIES: The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the National Credit Union Administration, and the Office of the Comptroller of the Currency

ACTION: Intergency supervisory policy regarding the assessment of civil money penalties.

SUMMARY: The Financial Institution Regulatory and Interest Rate Control Act of 1978 provides that the Federal financial institutions regulatory agencies may assess money penalties for the violation of a final cease and desist order or violations of the provisions of certain other statures. As a means of promoting consistency in the application of this authority, the five agencies represented on the Examination Council have adopted a supervisory policy (1) establishing procedures for exchanging information on assessment actions taken and (2) specifying the factors that should be taken into consideration in deciding whether, and in what amount, civil money penalties should be imposed. The policy does not attempt to establish an inflexible schedule of "Standard penalties," however.

EFFECTIVE DATE: August 28, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Virgil Mattingly, Legal Division, Board of Governors of the Federal Reserve Systems, 20th and Constitution Avenue, NW., Room B-1000-E, Washington, DC 20219, (202) 452-3430.

Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies

Under provisions of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 ("FIRA"), 92 Stat. 3641, the Federal financial institutions regulatory agencies [1] are authorized to

[1] Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board, National Credit Union Administration, and Office of the Comptroller of the Currency.

assess civil money penalties for violations of various Federal statutes and regulations promulgated thereunder. The agencies are each authorized to assess a civil money penalty for a violation of the terms of a final cease and desist order. The Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation are each authorized to assess civil money penalties for violations of:

(1) sections 22(h) and 23A of the Federal Reserve Act (respectively, limitations on loans by insured banks to their executive officers, directors and principal shareholder and limitation on loans by insured bank to their affilates);

(2) the prohibitions of Title VIII of FIRA (12 U.S.C.§ 1972(2)) against preferential lending to bank executive officers, directors, and principal shareholders based upon a correspondent account relationship; and

(3) a willful violation of the Change in Bank Control Act of 1978 (12 U.S.C. § 1817.(j)).

In addition, the Board is authorized to assess civil money penalties for violations of sections 19 and 22 of the Federal Reserve Act (reserve requirements, interest rate limitations and limitations on loans to executive officers of member banks) and for violations of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841–1849). The Comptroller may assess penalties for violations of section 22 of the Federal Reserve Act and any provision of the National Banking Act. The Federal Savings and Loan Insurance Corporation is authorized to assess a civil money penalty for a violation of the Savings and Loan Holding Company Act (12 U.S.C. 1730a) and the Change in Savings and Loan Control Act of 1978 (12 U.S.C. 1730(q)).

The maximum civil penalty that may be assessed is generally $1,000 per day for each day the violation continues. The maximum civil penalties are $100 per day for a violation of section 19 of the Federal Reserve Act and $10,000 per day for a violation of the Change in Bank Control Act and the Change in Savings and Loan Control Act. In determining the amount of the penalty, the FIRA provisions require the appropriate agency to consider the financial resources and good faith of the company or person charged, the gravity of the violation, any history of previous violations, and such other matters as justice may require.

The agencies have adopted amendments to their Rules of Practice and Procedure to implement their civil money penalty authority.[2] The procedures are essentially uniform among the agencies. The agency procedures provide for the commencement of civil money penalty proceedings with the issuance of a notice of assessment. The notice generally contains:

(1) a statement of the legal authority for the assessment;

(2) the amount of the proposed penalty;

(3) the factual or legal grounds for the assessment;

(4) advice to the person being assessed of a right to a formal administrative hearing on the assessment; and

(5) advice regarding the 10 day time limit to request such a hearing.

Under the FIRA civil penalty provisions, the person against whom a penalty is assessed has the opportunity to challenge the assessment in a formal administrative hearing[3] and, following the hearing, to obtain judicial review of any assessment in an appropriate United States court of appeals. Under the Change in Bank Control Act and the Change in Savings and Loan Control Act, the person is entitled to a trial on the assessment in an appropriate United States district court.

To provide guidance in the procedures and criteria used by the agencies in the assesment of civil money penalties under the FIRA provisions and to promote coordination among the agencies in the assessment of penalties, the agencies have adopted this supervisory policy.

1. *Interagency Notification of Civil Money Penalty Assessments.*

Any Federal bank regulatory agency that initiates a civil money penalty assessment will notify the other two Federal bank regulatory agencies. The other Federal bank regulatory agencies shall also be furnished copies or summaries of any notices of assessment and final assessment orders.

Any Federal financial institutions regulatory agency that assesses a civil money penalty for a violation of the terms of a final cease and desist order or for a violation of the Change in Bank Control Act or the Change in Savings and Loan Control Act will provide the other agencies that have assessment authority for violations of similar statutes with summaries of the assessment action without identifying details or other confidential information. The Federal bank regulatory agencies will exchange detailed and complete information among themselves regarding all assessment actions.

The agencies believe that this policy of interagency notification of civil money penalty actions will promote consistency among the agencies in assessment situations, particularly in the case of statutes where the agencies have similar assessment authority. The agencies also believe that interagency notification is desirable in view of the size of the penalties that may be assessed and the possibility of impact on affiliated institutions. The procedure is not intended to preclude or delay any agency from initiating a civil penalty action.

2. *Considerations in the Assessment of Civil Money Penalties.*

In assessing a civil money penalty under the various FIRA provisions, the agencies are required to consider the size of the financial resources and good faith of the respondent, the gravity of the violation, the history of previous violations, and such other matters as justice may require. In determining the amount of a civil money penalty, the agencies believe that a significant consideration should be the financial or economic benefit the respondent obtained from the violation. Accordingly, the agencies will consider, in addition to the other factors specified in the statute, the financial or economic benefit the respondent derived from the illegal activity. The removal of economic benefit will, however, usually be insufficient by itself to promote compliance with the statutory provisions. The penalty may, therefore, in approproiate circumstances reflect some additional amount beyond the economic benefit derived to provide a deterrent to future conduct.

In determining whether the violation is of sufficient gravity (i.e., the importance, significance, and seriousness of the situation) to warrant initiating a civil money penalty assessment proceeding, the agencies have identified the following factors as relevant:

(1) Evidence that the violation or pattern of violations was intentional or committed with a disregard of the law or the consequences to the institution;

(2) The frequency or recurrence of violations and the length of time the violation has been outstanding;

[2] These rules are codified at 12 CFR Parts 19, 263, 308, and 747 (1980).

[3] The Federal Reserve Board's Rules of Practice provide a person against whom a penalty is being considered with an opportunity, prior to the formal issuance of a notice of assessment, to submit written comments and for an informal conference with the Board's staff to show that a proposed penalty is inappropriate or should be reduced in amount. The other agencies have adopted a similar informal procedure as a matter of internal agency policy.

(3) Continuation of violation after the respondent becomes aware of it, or its immediate cessation and correction;

(4) Failure to cooperate with the agency in effecting early resolution of the problem;

(5) Evidence of concealment of the violation, or its voluntary disclosure;

(6) Any threat of or actual loss or other harm to the institution, including harm to public confidence in the institution, and the degree of any such harm;

(7) Evidence that participants or their associates received financial or other gain or benefit or preferential treatment as a result of or from the violation;

(8) Evidence of any restitution by the participants in the violation;

(9) History of prior violations, particularly where similarities exist between those and the violation under consideration;

(10) Previous criticism of the institution for similar violations;

(11) Presence or absence of a compliance program and its effectiveness;

(12) Tendency to create unsafe or unsound banking practices or breach of fiduciary duty; and

(13) The existence of agreements, commitments or orders intended to prevent the subject violation.

The delineation of these factors is intended to provide guidance regarding the circumstances under which the agencies may initiate a civil money penalty action and is not intended to preclude any Federal financial institutions regulatory agency from considering any other matters relevant to the appropriateness of a civil money penalty assessment.

Dated: September 3, 1980.

Theodore E. Allison,

Secretary, Board of Governors of the Federal Reserve System.

Dated: September 3, 1980.

Rosemary Brady,

Secretary of the Board, National Credit Union Administration.

Dated: September 3, 1980.

Robert D. Linder,

Acting Secretary, Federal Home Loan Bank Board.

Dated: September 3, 1980.

Lewis G. Odom, Jr.,

Senior Deputy Comptroller, Office of the Comptroller of the Currency.

Dated: September 3, 1980.

Hoyle L. Robinson,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 80-27522 Filed 9-8-80; 8:45 am]

BILLING CODE 6722-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-630-DR]

Ohio; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Ohio (FEMA-630-DR), dated August 23, 1980, and related determinations.

DATED: August 23, 1980.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 634-7848.

NOTICE: Pursuant to the authority vested in the Director of the Federal Emergency Management Agency by the President under Executive Order 12148 effective July 15, 1979, and delegated to me by the director under Federal Emergency Management Agency Delegation of Authority, and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that, in a letter of August 23, 1980, the President declared a major disaster as follows:

I have determined that the damage in certain ares of the State of Ohio resulting from severe storms and flooding beginning on or about August 11, 1980, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Ohio.

In order to provide Federal Assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirements that Federal assistance be supplemental, the Federal Government will provide 75 percent of all eligible public assistance under Pub. L. 93-288 in designated areas.

The time period prescribed for the implementation of Section 3 13(a), Priority to Certain Applications for Public Facility and Public Housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of Federal Emergency Management Agency under Executive Order 12148, and delegated to me by the Director under Federal Emergency Management Agency Delegation of Authority, I hereby appoint Mr. Ronald Buddecke of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following areas of the State of Ohio to have been affected adversely by this declared major disaster.

The following Counties for Individual Assistance and Public Assistance:

Belmont
Columbiana
Guernsey
Jefferson
Muskingum

(Catalog of Federal Domestic Assistance No. 83.300, Disaster Assistance. Billing Code 6718-02)

William H. Wilcox,

Associate Director, Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 80-27621 Filed 9-8-80; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-627-DR]

Texas; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-627-DR), dated August 11, 1980, and related determinations.

DATED: August 21, 1980.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 634-7848.

NOTICE: The notice of a major disaster for the State of Texas, dated August 11, 1980, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 11, 1980.

The following counties for public assistance in addition to individual assistance.

Aransas
Brooks
Cameron
Hidalgo
Jim Wells
Kleberg
Nueces
San Patricio
Willacy

(Catalog of Federal Domestic Assistance No. 83.310, Disaster Assistance)

William H. Wilcox,

Associate Director, Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc 80-27619 Filed 9-8-80; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-627-DR]

Texas; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This Notice amends the Notice of a major disaster for the State of Texas (FEMA-627-DR), dated August 11, 1980 and related determinations.

DATE: August 25, 1980.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 634-7848.

NOTICE: The Notice of a major disaster for the State of Texas dated August 11, 1980, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 11, 1980.

The following counties for Individual Assistance only:

Duval
Jim Hogg
Kenedy

(Catalog of Federal Domestic Assistance No. 83.300, Disaster Assistance)

William H. Wilcox,

Associate Director, Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 80-27670 Filed 9-8-80; 8:45 am]

BILLING CODE 6718-02-M

West Virginia; Amendment to Notice of Major Disaster Declaration

[FEMA-628-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This Notice amends the Notice of a major disaster for the State of West Virginia (FEMA-628-DR), dated August 15, 1980, and related determinations.

DATED: August 26, 1980.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 634-7848.

NOTICE: The Notice of a major disaster for the State of West Virginia dated August 15, 1980, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 15, 1980.

Fayette County for Individual Assistance only.

The following Counties for Individual and Public Assistance:

Hancock
Jackson
Kanawha
Marion
Marshall
Monongalia
Preston
Ohio
Putnam
Taylor
Webster

(Catalog of Federal Domestic Assistance No. 83.300, Disaster Assistance.

William H. Wilcox,

Associate Director, Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 80-27622 Filed 9-8-80; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-628-DR]

West Virginia; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This Notice amends the Notice of a major disaster for the State of West Virginia (FEMA-628-DR), dated August 15, 1980, and related determinations.

DATED: August 27, 1980.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 634-7848.

NOTICE: The Notice of a major disaster for the State of West Virginia dated August 15, 1980, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 15, 1980.

Nicholas County for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.300, Disaster Assistance.

Thomas R. Casey,

Acting Associate Director, Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 80-27623 Filed 9-8-80; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Filing Requirements Applicable to "Per-Container" Rates; Filing of Petition for Rulemaking

Notice is given that a petition has been filed by Sea-Land Service, Inc., for institution by the Commission of a rulemaking proceeding to provide for the filing of "per-container" rates in foreign commerce trades. Specifically, Sea-Land asserts that there are no rules currently extant which govern the filing of such rates and that confusion and ambiguities have arisen as a result.

Interested persons may inspect and obtain a copy of the petition at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 11101, or may inspect the petition at the Field Offices located at New York, New York; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico.

Interested persons may submit replies to the petition to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before September 30, 1980. An *original and fifteen copies* of such replies shall be submitted.

Francis C. Hurney,

Secretary.

[FR Doc. 80-27728 Filed 9-8-80; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Am-Can Investment, Inc.; Proposed Retention of Lending Activities

Am-Can Investment, Inc., Moorhead, Minnesota, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain one loan previously made by Am-Can Investment. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than September 29, 1980.

Board of Governors of the Federal Reserve System, September 2, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-27584 Filed 9-8-80; 8:45 am]

BILLING CODE 6210-01-M

Barnesville Investment Corp.; Proposed Retention of First Agency

Barnesville Investment Corporation, Barnesville, Minnesota, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain First Agency, Barnesville, Minnesota.

Applicant states that the proposed subsidiary would perform the activities of general insurance agent. These activities would be performed from offices of Applicant's subsidiary in Barnesville, Minnesota, and the geographic areas to be served are Barnesville, Clay County, Minnesota. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any requests for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than September 29, 1980.

Board of Governors of the Federal Reserve System, September 2, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-27583 Filed 9-8-80; 8:45 am]

BILLING CODE 6210-01-M

First of Herington, Inc.; Proposed Retention of Insurance Agency Activities

First of Herington, Inc., Herington, Kansas, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.4(b)(2) of the Board's regulation Y (12 CFR 225.4(b)(2)), for permission to continue to engage in general insurance agency activities in a community that has a population not exceeding 5,000. These activities would be performed at offices of Applicant's subsidiary bank in Herington, Kansas, and the geographic areas to be served are that town and the surrounding area within a radius of approximately 12 miles. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than September 29, 1980.

Board of Governors of the Federal Reserve System, September 2, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-27585 Filed 9-8-80; 8:45 am]

BILLING CODE 6210-01-M

Strasburg Banshares, Inc.; Formation of Bank Holding Company

Strasburg Banshares, Inc., Strasburg, North Dakota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 95.85 percent or more of the voting shares (less director's qualifying shares) of Strasburg State Bank, Strasburg, North Dakota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 2, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, September 2, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-27582 Filed 9-8-80; 8:45 am]

BILLING CODE 6210-01-M

Ackley Bancorporation; Proposal To Continue To Engage in Insurance Activities

Ackley Bancorporation, Ackley, Iowa, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to continue to engage through its subsidiary, Ackley Insurance Agency, in general insurance agency activities in a community having a population not exceeding 5,000. These activities would be performed from offices of Applicant's subsidiary in Ackley, Iowa, and the geographic area to be served is Ackley, Iowa and its immediate surrounding area. Such activities have been specified by the

Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than September 29, 1980.

Board of Governors of the Federal Reserve System, September 2, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-27708 Filed 9-8-80; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Notice of Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than September 29, 1980.

A. *Federal Reserve Bank of New York* (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. Chemical New York Corporation, New York, New York (leasing and financing activities; Florida): to engage, through its subsidiary, Chemical Business Credit Corp., in leasing real and personal property and equipment on a non-operating, full payout basis, and acting as agent, broker and advisor with respect to leases; financing real and personal property and equipment such as would be done by a commercial finance company; and servicing such extensions of credit. These activities would be conducted from an office in Altamonte Springs, Florida, serving the State of Florida. Comments on this application must be received by September 26, 1980.

2. Manufacturers Hanover Corporation, New York, New York (mortgage banking, insurance activities; Ohio): to relocate an office of Manufacturers Hanover Mortgage Corporation. The office of MHMC is engaged in the making, acquiring and servicing for its own account and the account of others mortgage loans and insurance agency activities related to such loans. The application is for office relocation from 1121 Superior Boulevard, Cleveland, Ohio 44114 to Suite 180, One Independence Place, 4807 Rockside Road, Indpendence, Ohio 44131. The application does not involve the commencement of any new activity. The new office will serve the same service area as the old office, which is comprised of Cuyahoga, Lake, Lorraine, Madina and Geoga Counties. Comments on this application must be received by September 26, 1980.

3. J. P. Morgan & Co., Inc., New York, New York, financing community welfare projects; United States, its territories, possessions and Puerto Rico): to expand the activities of its direct subsidiary Morgan Community Development Corporation, to include making loans to projects designed for community welfare purposes. Previously approved activities, which included the financing of housing for low- and moderate-income persons will continue to be engaged in. This proposal involves an expansion of activities only; these activities will be conducted from offices in New York, New York; and the service area for the existing and expanded activities continues to include the united States, its territories, possessions and Puerto Rico.

B. *Federal Reserve Bank of Richmond* (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Bank of Virginia Company, Richmond, Virginia (finance and insurance activities; Pennsylvania): to engage through its subsidiary, General Finance Service Corporation, in the activities of making loans and other extensions of credit such as would be made by a consumer finance company, and of acting as agent in the sale of credit life insurance, credit accident and health insurance, and other insurance written to protect collateral, directly related to extensions of credit by General Finance Service Corporation. These activities would be conducted from an office in Trackville, Pennsylvania, serving Trackville, Pennsylvania.

2. Maryland National Corporation, Baltimore, Maryland (finance activities; Arizona, Louisiana, New Mexico, Oklahoma, and Texas): to engage through its subsidiary, Maryland National Industrial Finance Corporation, in the activities of making and servicing loans and other extensions of credit such as would be made by a commercial finance company, and acting as advisor or broker in commercial lending transactions. These activities would be performed from an office in Houston, Texas, serving the states listed in the caption above.

C. *Federal Reserve Bank of Chicago* (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Ill. 60690:

Continental Illinois Corporation, Chicago, Ill. (making or acquiring loans and other extensions of credit and servicing loans and other extensions of credit for any person; Florida). To establish a *de novo* subsidiary, to be

known as Continental Illinois Commercial Corporation, to engage in making or acquiring, for its own account or for the account of others, secured and unsecured loans and other extensions of credit (including issuing letters of credit and accepting drafts) to or for business, governmental and other customers (excluding direct consumer lending), and servicing such loans and other extensions of credit. Such activities will be conducted from offices of Continental Illinois Commercial Corporation to be located in Chicago, Ill. and Miami, Fla., both serving the State of Florida. Comments on this application must be received by September 26, 1980.

D. *Federal Reserve Bank of Kansas City* (Thomas M. Hoenig, Assistant Vice President) 925 Grand avenue, Kansas City, Mo. 64198:

Kansas City Bancshares, Inc., Kansas City, Mo. (leasing activities; Kansas and Missouri): to engage, through its subsidiary, Capital Services, Inc., in leasing personal property in conformance with the Board's Regulation Y. These activities would be conducted from an office in Kansas City, Missouri, servicing Jackson, Platt and Clay Counties in Missouri and Johnson and Wyandatte Counties in Kansas. Comments on this application must be received by September 26, 1980.

E. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, Calif. 94120:

Security Pacific Corporation, Los Angeles, Calif. (finance and credit-related insurance activities; California): to engage, through its subsidiary, Security Pacific Finance Corp., in making or acquiring for its own account or for the account of others, loans and extensions of credit, including making consumer installment personal loans, purchasing consumer installment sales finance contracts, making loans to small businesses and other extensions of credit such as would be made by a factoring company or a consumer finance company, and acting as broker or agent for the sale of credit-related life, accident and health insurance and credit-related property and casualty insurance. These activities would be conducted from an office of the subsidiary located in Irvine, Calif., serving the state of California.

F. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, September 2, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-27709 Filed 9-8-80; 8:45 am]

BILLING CODE 6210-01-M

Cen-Tex Bancshares, Inc.; Formation of Bank Holding Company

Cen-Tex Bancshares, Inc., Georgetown, Texas, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of The First National Bank of Georgetown, Georgetown, Texas. The factors that are considered in acting on the application ar set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 2, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, September 3, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-27711 Filed 9-8-80; 8:45 am]

BILLING CODE 6210-01-M

Hunter Holding Company; Formation of Bank Holding Company

Hunter Holding Company, Hunter, North Dakota, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of Security State Bank of Hunter, Hunter, North Dakota. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 1, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, September 3, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-27710 Filed 9/8/80; 8:45 am]

BILLING CODE 6210-01-M

First State Bancshares, Inc.; Formation of Bank Holding Company

First State Bancshares, Inc., Valdosta, Georgia, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank and Trust Company, Valdosta, Georgia and 75.9 percent of the voting shares of Farmers and Merchants Bank, Adel, Georgia. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 2, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, September 2, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-27660 Filed 9-8-80; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

National Committee on Vital and Health Statistics; Subcommittee on Environmental Health Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92-463), notice is hereby given that the Subcommittee on Environmental Health Statistics of the National Committee on Vital and Health Statistics, pursuant to functions established by Section 306(K), Paragraph (4) of the Public Health Service Act (42 USC 242K), will convene Friday, September 19, 1980, at 9:30 a.m. in Room 337-339 of the Hubert H.

Humphrey Building, 200 Independence Avenue, N.W., Washington, D.C.

Principal consideration will be devoted to a discussion of guidelines and plans for the Subcommittee, and recommendations to be made to the National Committee on Vital and Health Statistics. Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. Further information regarding this meeting of the Subcommittee or other matters pertaining to the National Committee on Vital and Health Statistics may be obtained by contacting Samuel P. Korper, Ph. D., M.P.H., Executive Secretary, National Committee on Vital and Health Statistics, Room 17A-55, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-2660.

Dated: September 3, 1980.

Wayne C. Richey, Jr.,

Associate Director for Program Support, Office of Health Research, Statistics, and Technology.

[FR Doc. 80-27537 Filed 9-8-80; 8:45 am]

BILLING CODE 4110-85-M

Warner-Lambert Co.; Intent To Grant Exclusive License

Pursuant to § 6.3 of the Department Patent Regulations and 41 CFR Part 101-4, notice is hereby given of an intent to grant to Warner-Lambert Company of Ann Arbor, Michigan, an exclusive license to manufacture, use, and sell in the United States the invention described in United States patent application Serial No. 841,098, entitled "New Imidazole Compounds, Methods for Their Production and Conversion of Said Compounds Into (R)-3-(2-Deoxy-β-D-*Erythro*-Pentofuranosyl)-3,6,7,8-Tetrahydroimidazol[4,5-d][1,3] Diazepin-8-OL." A copy of the subject patent application may be obtained upon written request submitted to the Acting Chief, Patent Branch, Department of Health and Human Services, Room 5A03, Westwood Building, 5333 Westbard Avenue, Bethesda, Maryland 20205.

The proposed license will have a duration of five (5) years; may be royalty-bearing; and will contain other terms and conditions to be negotiated by the parties in accordance with Department of Health and Human Services Patent Regulations. Department of Health and Human Services will grant the license unless within sixty (60) days of this Notice the Acting Chief of the Patent Branch named hereinabove receives in writing any of the following, together with supporting documents:

(1) A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

(2) An application for a nonexclusive license to manufacture, use, or sell the invention in the United States is submitted in accordance with 41 CFR 101-4.104-2, and the applicant states that he has already brought the invention to practical application, or is likely to bring the invention to practical application expeditiously.

The Assistant Secretary for Health of the Department of Health and Human Services will review all written responses to this Notice.

Authority; 45 CFR.

Dated: September 3, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

[FR Doc. 80-27657 Filed 9-8-80; 8:45 am]

BILLING CODE 4110-12-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. NI-29]

Office of Environmental Quality

Intented Environmental Impact Statements for Certain Areas in Texas

The Department of Housing and Urban Development gives notice that an Environmental Impact Statement (EIS) is intended to be prepared for the following projects under HUD programs as described in the appendices to this Notice: Booth Creek Subdivision, City of Carrollton, Denton County, Texas and Areawide EIS, Houston, SMSA, Fort Bend and Brazoria Counties, Texas. This Notice is required by the Council on Environmental Quality under its rules (40 CFR Part 1500).

Interested individuals, governmental agencies, and private organizations are invited to submit information and comments concerning these projects to the specific person or address indicated in the appropriate part of the appendices.

Particularly solicted is information on reports or other environmental studies planned or completed in the project area, issues and data which the EIS should consider, recommended mitigating measures and alternatives, and major issues associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interests should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

Issued at Washington, D.C. August 29, 1980.

James Miller,

Acting Director, Office of Environmental Quality.

Appendix—EIS on Booth Creek Subdivision, City of Carrollton, Denton County, Tex.

The Dallas Area Office of the Department of Housing and Urban Development intends to prepare and issue a supplement to the Draft Environmental Impact Statement for the Rosemeade Subdivision located in the City of Carrollton, Denton County, Texas. The Supplement will be entitled Rosemeade—Booth Creek Subdivisions and will take into account the cumulative environmental impacts of the two subdivisions. The purpose of this Notice is to solicit comments and recommendations from all interested persons, local, state, and Federal agencies regarding the issues to be addressed in depth in the Supplement.

Description. The Trenton Corporation, 3141 Hood Street, Dallas, Texas, proposes to develop a 600 acre tract of land primarily for single family residential use. This subdivision is located in the northeast section of the City of Carrollton, with FM Road 544 as its northern boundary and Hebron Parkway as its southern boundary. The proposed extension of Josey Lane will bisect the subdivision. The Booth Creek subdivision is near the proposed Rosemeade subdivision. When fully developed, the subdivision will have 748 single family residences which will accommodate approximately 2,850 persons.

The developer has requested that the Department accept the subdivision for mortgage insurance under Section 203(b) of Title II of the National Housing Act of 1934. The developer has requested an early-start on 193 lots of the proposed subdivision.

Need. Due to the size and scope of the proposed development, the Dallas Area Office has determined that an environmental impact statement will be prepared pursuant to Pub. L. 91-190, the National Environmental Policy Act of 1969. This office has also determined that the impact statement may best be accomplished as a supplement to the environmental impact statement of the nearby Rosemeade subdivision.

Alternatives. The alternatives available to the Department are (1) accept the project as submitted, (2) accept the project with modifications, or (3) reject the project.

Scoping. No formal scoping meeting is anticipated for this project. It is the intent of this Notice to be considered as a part of the process used for scoping

the environmental impact statement. Any responses to this Notice will be used to help (1) determined significant environmental issues, and (2) identify data which the EIS should address.

Contact. Comments should be sent within 21 days following publication of this Notice in the Federal Register to I. J. Ramsbottom, Environmental Officer, Dallas Area Office, Department of Housing and Urban Development, 2001 Bryan Tower, Dallas, Texas 75201. The commercial telephone number of this office is (214) 767–8347 and the FTS number is 729–8347.

Areawide EIS for Urbanizing Area of the South-Southwest Houston, Tex., SMSA, Fort Bend and Brazoria, Tex.

The Dallas Area Office of the Department of Housing and Urban Development proposes to prepare an Areawide Environmental Impact Statement on the northern portions of Fort Bend and Brazoria Counties.

Description. The area under consideration is a potential growth area of the Houston Standard Metropolitan Statistical Area. The area is triangular in shape with the southern boundary of Harris County on the northeast, State Highway No. 35 on the southeast and State Highway No. 36 on the southwest. Specifically, the area includes census tracts 701 through 705, 707 through 709 and 714 in Fort Bend County, and census tracts 601 through 604, 607 through 609, 614, 615 and 617 of Brazoria County. The area is estimated to include approximately 900 square miles.

Need. An Areawide EIS is designed to assess the cumulative environmental impacts that development might impose upon the area. The significant issues will be addressed, the environmentally sensitive areas will be identified and Areawide solutions and mitigating measures will be sought.

Alternatives. The proposed EIS will explore alternatives to the usual individual project or subdivision EIS approach. Through this approach, it is believed that delays in the acceptance of subdivisions for mortgage insurance may be minimal and paperwork may be reduced.

Scoping. Due to the large size of the area to be studied, the regional and local concerns to be addressed, the Dallas Area Office intends to hold a scoping meeting at the offices of the Houston-Galveston Area Council, 3701 West Alabama, Houston, Texas. The date and time of the meeting will be announced later. Interested persons, local, State and Federal agencies are invited to attend the meeting to discuss the significant issues which they believe should be analyzed in depth in the EIS.

Prior to the scoping meeting, we solicit your comments or a listing of significant issues. If any of the issues listed by you or your agency involve an area of expertise not generally known to be a part of HUD's interdisciplinary capability, your assistance may be requested in the preparation of the EIS in accordance with 40 CFR 1501.6. Please submit the name, address and telephone number of a designated person whom we may contact concerning the issues and needed assistance. Should you have knowledge of any pertinent documents regarding the issues which you have identified, HUD requests a copy of each, either on a permanent or loan basis for use in preparing the EIS. In the event that you are aware of individuals or agencies who are capable of providing information about your issue of concern, we would appreciate your providing names, addresses and telephone numbers of such individuals or agencies.

Comments. All relevant comments, recommendations, issues or information should be forwarded on or before September 30, 1980, to I. J. Ramsbottom, Environmental Clearance Officer, Dallas Area Office, Department of Housing and Urban Development, 2001 Bryan Tower, Dallas, Texas 75201, telephone (214) 767–8347.

[FR Doc. 80-27581 Filed 9-8-80; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Oil Shale Tract Delineation-Selection Criteria Clarification of Due Date for Written Statements

On August 6, 1980, notice was published (Federal Register 52260) of meetings to be held in Salt Lake City, Utah on August 25, and in Denver, Colorado on August 28, to establish criteria for the delineation and tract selection for additional prototype oil shale leasing. That notice stated that written statements could be submitted to Mr. Henry O. Ash, Office of the Oil Shale Environmental Advisory Panel, Department of the Interior, Room 690, Building 67, Denver Federal Center, Denver, Colorado 80225.

The closing date for written comments on the preliminary draft criteria distributed at those meetings is hereby extended until October 16, 1980. Comments are especially requested which recommend more detail concerning the individual preliminary draft criteria. Copies of the criteria may be obtained from Mr. Ash at the above address or Mr. Winston Short, Bureau of Land Management (530), Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20240. Written comments should also be directed to Mr. Short at the latter address rather than to Mr. Ash.

Daniel P. Beard,
Acting Assistant Secretary of Land and Water Resources.
September 3, 1980.

[FR Doc. 80-27700 Filed 9-8-80; 8:45 am]
BILLING CODE 4310-84-M

[ORE 012701]

Oregon; Proposed Continuation of Withdrawal

The Bureau of Land Management, U.S. Department of the Interior, proposes that the existing land withdrawal made by Public Land Order 2956 on March 4, 1963, be continued in its entirety for a 20-year period, pursuant to section 204 of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2751, 43 U.S.C. 1714. The withdrawn land is described as follows:

Willamette Meridan

T. 19 S., R. 14 E.,
Sec. 15, W½E½ and W½;
Sec. 22, NW¼NE¼ and N½NW¼.

The area described contains 600 acres in Deschutes County.

The site, originally withdrawn and reserved for ecological studies and research as the Western Juniper Natural Area, is now known as the Horse Ridge Research Natural Area. The land is currently segregated from location and entry under the public land laws generally, including the mining laws. No change is proposed in the purpose or segregative effect of the withdrawal.

Notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal continuation. All interested persons who desire to be heard on the proposal must submit a written request for a hearing to the undersigned on or before October 15, 1980. Upon determintion by the State Director, Bureau of Land Management, that a public hearing will be held, a notice will be published in the Federal Register giving the time and place of such hearing. In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the proposed withdrawal continuation may be filed with the undersigned officer on or before October 15, 1980.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential

demand for the land and its resources. He will review the withdrawal rejustification to insure that continuation would be consistent with the statutory objectives of the programs for which the land is dedicated; the area involved is the minimum essential to meet the desired needs; the maximum concurrent utilization of the land is provided for; and an agreement is reached on the concurrent management of the land and its resources. He will also prepare a report for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

All communications in connection with this proposed withdrawal continuation should be addressed to the undersigned officer, Bureau of Land Management, U.S. Department of the Interior, P.O. Box 2965, Portland, Oregon 97208.

Dated: August 28, 1980.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 80-27523 Filed 9-8-80; 8:45 am]

BILLING CODE 4310-84-M

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before August 29, 1980. Pursuant to § 1202.13 of 36 CFR Part 1202, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, D.C. 20243. Written comments should be submitted by September 24, 1980.

Sarah G. Oldham,

Acting Chief, Registration Branch.

MICHIGAN

Historic Engineering and Industrial sites in Michigan Thematic Resources.
Reference—see individual listings under Allegan, Alger, Bay, Berrien, Calhoun, Cheboygan, Chippewa, Delta, Dickinson, Eaton, Goygebic, Grand Traverse, Gratiot, Houghton, Huron, Ionia, Iosco, Jackson, Kent, Keweenaw, Lenawee, Macomb, Marquette, Mecosta, Menominee, Muskegon, Newaygo, Ontonagon, Saginaw, St. Clair, St. Joseph, Schoolcraft, Washtenaw, Wayne, and Wexford Counties.

Allegan County

Hamilton, *Rabbit River Trestle (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Little Rabbit River.
New Richmond, *Fifty-seventh Street Bridge (Historic Engineering and Industrial sites in Michigan Thematic Resources)* Spans Kalamazoo River.

Alger County

Chatham vicinity, *Union Fuel Company Charcoal Kiln (Historic engineering and Industrial sites in Michigan Thematic Resources)* SR G-2.
Shingleton vicinity, *Grand Island East Channel Lighthouse (Historic Engineering and Industrial Sites in Michigan Thematic Resources).*

Baraga County

Baraga vicinity, *Sand Point Lighthouse (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Sand Point.

Bay County

Bay City, *Michigan Central Railroad Dutch Creek Trestle (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Over Dutch Creek.
Bay City, *Saginaw River Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Saginaw River.
Essexville, *Saginaw River Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Saginaw River.
Kawkawlin, *Kawkawlin River Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Kawkawlin River.

Berrien County

St. Joseph, *St. Joseph River Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans St. Joseph River.
St. Joseph, *St. Joseph Station (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* 410 Vine St.

Calhoun County

Albion, *Cass Avenue Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Cass Ave.
Battle Creek, *Battle Creek Station (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* 25 E. Dickman St.
Ceresco vicinity, *F Drive Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Kalamazoo River.
Ceresco vicinity, *Wattles Road Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Wattles Rd.

Cheboygan County

Mackinac City and vicinity, *Mackinac Straits Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* (also in Mackinac County).

Chippewa County

Sault Ste. Marie, *International Railroad Bridge, American Locks Section (Historic Engineering and Industrial Sites in Michigan Thematic Resources).*
Sault Ste. Marie, *International Railroad Bridge, River Section (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans St. Mary's River.
Sault Ste. Marie, *Michigan Lake Superior Power Company Generating Plant (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* On St. Mary's River.
Sault Ste. Marie, *Michigan Lake Superior Power Company Headgates (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Off I-75.
Sault Ste. Marie, *Michigan Lake Superior Power Company Power Canal (Historic Engineering and Industrial Sites in Michigan Thematic Resources).*
Sault Ste. Marie, *Sault Ste. Marie International Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans St. Mary's River.
Sault Ste. Marie, *Sault Ste. Marie Water Tower (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Ryan Rd. and Easterday St.

Delta County

Bark River, *Carp River Iron Company: Barkville Kilns (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Two Mile Hill.
Escanaba, *Escanaba Roundhouse (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Off MI 35.
Escanaba vicinity, *Escanaba Power Company Dam No. 1 (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* N of Escanaba.
Wells, *Escanaba River Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Escanaba River.

Dickinson County

East Kingsford vicinity, *Chicago, Milwaukee, St. Paul, and Pacific Railroad: Menominee River Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Menominee River.
Iron Mountain, *Cornish Pumping Engine (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Kent St.
Iron Mountain vicinity, *Chicago and Northwestern Railroad: Minominee River Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Menominee River.
Quinnesec, *Fumee Creek Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Fumee Creek.

Eaton County

Bellevue vicinity, *Dyer Kiln (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Sand Rd.

Grand Ledge, *Detroit, Lansing, and Northern Michigan Railroad Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Grand River.

Gogebic County

Bessemer, *First Street Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Off U.S. 2.
Ramsay, *Keystone Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Black River.

Grand Traverse County

Old Mission vicinity, *Old Mission Point Lighthouse (Historic Engineering and Industrial Sites in Michigan Thematic Resources).*

Gratiot County

St. Louis, *Cheesman Road Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Cheesman Rd.

Houghton County

Baltic, *Baltic Mine (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Off MI 26.
Hubbell vicinity, *Calumet and Hecla Mining Company Dredge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Off MI 26.
Jacobsville, *Jacobsville Lighthouse (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* On Lake Superior.
Lake Linden vicinity, *Calumet and Hecla Mining Company Reclamation Plant (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* S of Lake Linden.
Redridge, *Redridge Dam (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* On Salmon Trout River.
Redridge, *Redridge Steel Dam (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* On Salmon Trout River.
Bay Port vicinity, *Bay Port Quarries (Historic Engineering and Industrial Sites in Michigan Thematic Resources).*

Ionia County

Portland, *Bridge Street Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Grand River.
Portland vicinity, *Charlotte Highway Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Grand River.
Smyrna vicinity, *Button Road Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* E of Smyrna.

Iosco County

Sand Lake vicinity, *Cooke Hydroelectric Plant (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* On Au Sable River.

Iron County

Stambaugh, *Hiawatha Mine Number One Buildings (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Seldon Rd.
Stambaugh, *Hiawatha Mine Number One Headframe (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Seldon Rd.

Jackson County

Jackson, *Jackson Station (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* 501 E. Michigan Ave.
Norvell, *Ament Mills (Norvell Mill) (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* 305 Mill Rd.
Norvell, *Norvell Dam and Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Mill Rd.

Kent County

Grand Rapids, *Berkey and Gay Furniture Company (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* 920—964 Monroe St., NW.
Grand Rapids, *Bridge Street Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Bridge St.
Grand Rapids, *Grand Rapids and Indiana Line: Grand Rapids Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Grand River.
Grand Rapids, *Keeler Building (historic Engineering and Industrial Sites in Michigan Thematic Resources)* 60 N. Division St.
Grand Rapids, *Michigan Central Railroad: Grand River Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Grand River to Market St.
Grand Rapids, *Michigan Railway Engineering Company: Grand River Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources,* Spans Grand River.
Grand Rapids, *North Park Street Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Grand River.
Grand Rapids, *Pere Marquette Railrood Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Grand River.
Grand Rapids, *Waters Building (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Ottawa Ave.
Lowell, *Jackson Street Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Jackson St.
Lowell, *Pere Marquette Railroad: Grand River Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Grand River.
Rockford, *Rouge River Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Rouge River.
Wyoming, *New York Central Railroad: Grand River Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* I-196.

Keweenaw County

Ahmeek vicinity, *Ahmeek Mine, Shafts 3 and 4 (HIstoric Engineering and Industrial Sites in Michigan Thematic Resources)* U.S. 41.
Eagle River, *Eagle River Lighthouse (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Off MI 26.
Eagle River vicinity, *Sand Hills Lighthouse (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Five Mile Point.
Gay vicinity, *Bete Gris (Mendota) Lighthouse (Historic Engineering and Industrial Sites in Michigan Thematic Resources).*

Lenawee County

Adrian, *Michigan Southern Railroad: Raisin River Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Raisin River.

Macomb County

Mount Clemens, *Mount Clemens Station (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* 198 Grand Ave.

Marquette County

Big Bay vicinity, *Big Bay Point Lighthouse (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Big Bay Point.
Ishpeming, *Cliff Shaft Headframe (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Euclid St. and Lake Shore Dr.
Ishpeming, *Cliff Shaft Mine: East End (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* 7th and Division Sts.
Mangum, *Mangum Kiln (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Greenfield and Mangum Rds.
Marquette, *Marquette City Waterworks (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Lake St.
Marquette, *Peninsular Iron Company: Carp River Kiln (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* U.S. 41.
Negaunee, *Negaunee Mine (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Lincoln St.

Mecosta County

Big Rapids vicinity, *Rogers Hydroelectric Plant (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* On Muskegon River.

Menominee County

Hermansville, *Wisconsin Land and Lumber Company, IXL Plant (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Off U.S. 2.
Stephenson vicinity, *Grands Rapids Hydroelectric Plant (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* On Menominee River.
Stephenson vicinity, *Stephenson Charcoal Kilns (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* SR 352.

Muskegon County

Montague vicinity, *White Lake Lighthouse (Historic Engineering and Industrial Sites*

in Michigan Thematic Resources) White Lake Channel.
Muskegon, *Amazon Hosiery Mill (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* 530—550 W. Western Ave.
Muskegon, *Lake Shore Drive Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Ruddiman Creek.

Newaygo County

Newaygo, *Muskegon River Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Muskegon River.

Ontonagon County

Victoria vicinity, *Victoria Mining Company Air Compressor (Historic Engineering and Industrial Sites in Michigan Thematic Resources).*

Saginaw County

Birch Run vicinity, *Burt Road Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Burt Rd.
Oakley vicinity, *Niver Road Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Shiawasee River.
Saginaw, *Saginaw Station (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Potter St.
Saginaw, *Sixth Street Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Saginaw River.

St. Clair County

Port Huron, *Bluewater Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans St. Clair River.

St. Joseph County

Centreville vicinity, *Langley Covered Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans St. Joseph River.
Flowerfield, *Flowerfield Mills (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Factory St.

Schoolcraft County

Gulliver vicinity, *White Marble Lime Company Kilns (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Duck Inn Rd.
Manistique, *Manistique Water Tower (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Deer St.

Washtenaw County

Dexter, *Island Lake Road Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Island Lake Rd.
Dexter, *Mill Creek Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Spans Mill Creek.
Ypsilanti, *Ypsilanti Water Tower (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Summit and Cross Sts.

Wayne County

Detroit, *Ambassador Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* 1227 21st St. (also in Canada).
Detroit, *Belle Isle Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Jefferson Ave. and E. Grand Blvd.
Detroit, *Cadillac Motor Car Company (Historic Engineering nd Industrial Sites in Michigan Thematic Resources)* Amsterdam Ave.
Detroit, *Detroit Chesapeake and Ohio Bridge (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Southern Rd. and Miller St.
Detroit, *Detroit River Railroad Tunnel (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Jefferson Ave. and 10th St. (also in Canada).
Detroit, *Detroit-Windsor Tunnel (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* 151 E. Atwater St. (also in Canada).
Detroit, *Ford Motor Company Piquette Plant (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* 411 Piquette and Beaubien Sts.
Detroit, *Packard Motor Company, Building No. 10 (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* 1580 E. Grand Blvd.
Detroit, *Palms Apartment House, (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* 1001 E. Jefferson St.
Detroit, *Parker Block (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* 1075 Woodward Ave.
Grosse Ile, *Grosse Ile Lighthouse (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Lighthouse Point.

Wexford County

Cadillac, *Shay Logging Locomotive (Historic Engineering and Industrial Sites in Michigan Thematic Resources)* Cass St.

VIRGINIA

Alexandria (independent city)

Protestant Episcopal Theological Seminary, 3737 Seminary Rd.

Appomattox County

Pamplin, *Pamplin Pipe Factory.*

Buckingham County

Buckingham vicinity, *Perry Hill,* VA 56.

Cumberland County

Cumberland vicinity, *Grace Church, Ca Ira,* W of Cumberland on VA 632.
Cumberland vicinity, *Thornton, Charles Irving, Tombstone,* W of Cumberland on Oak Hill Rd.

Gloucester County

Gloucester vicinity, *Warner Hall,* VA 629.

Lynchburg (independent city)

Jones Memorial Library, 434 Rivermont Ave.

Petersburg (independent city)

Washington Street Methodist Church, 14—24 E. Washington St.

Portsmouth (independent city)

Pythian Castle, 610—612 Court St.

Prince George County

Carson vicinity, *Martin's Brandon Church,* VA 10 and VA 1201.

Roanoke (independent city)

Mountain View, 714 13th St., SW.

[FR Doc. 80-27521 Filed 9-8-80; 8:45 am]
BILLING CODE 4310-03-M

National Park Service

Santa Monica Mountains National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Santa Monica Mountains National Recreation Area Advisory Commission will be held on September 30, 1980 at 3:30 p.m in the community room at the Malibu Civic Center, 23525 Civic Center Way, Malibu, CA.

The Advisory Commission was established by Pub. L. 95-625 to provide for free exchange of ideas between the National Park Service and the public to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service in Los Angeles and Ventura Counties.

Members of the Commission are as follows:
Dr. Norman P. Miller, Chairperson
Honorable Marvin Braude
Ms. Sarah Dixon
Dr. Henry David Gray
Ms. Mary C. Hernandez
Mr. Mike Levett
Ms. Susan Barr Nelson
Mr. Carey Peck
Ms. Marilyn Whaley Winters

The major agenda items include a status report of the Santa Monica Mountains National Recreation Area, a report on Los Angeles Count beaches, a report on the Los Angeles County Area Plan, a report and vote on the criteria for interim use and management of newly acquired land, and an update on the General Management Plan.

The meeting is open to the public. Any member of the public may file with the Commission a written statement concerning issues to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact the Superintendent, Santa Monica Mountains National Recreation Area, 23018 Ventura Boulevard, Woodland Hills, California 91364.

Minutes of the meeting will be available for public inspection by October 31, 1980, at the above address.

Dated: September 2, 1980.

Jean C. Henderer,

Chief, Office of Cooperative Activities, National Park Service.

[FR Doc. 80-27586 Filed 9-8-80; 8:45 am]

BILLING CODE 4310-70-M

Geological Survey

Earthquake Data Review Panel; Public Meeting

Pursuant to Pub. L. 92-463, effective January 5, 1973, notice is hereby given that an open meeting will be held beginning at 9:00 a.m. (local time) on Wednesday, September 10, 1980. The Panel will meet at the California Institute of Technology in Pasadena.

(1) *Purpose.* To review earthquake data recorded in Southern California.

(2) *Membership.* The Panel is chaired by Dr. C. B. Raleigh and is composed of persons drawn from the fields of geology, geophysics, engineering, and rock mechanics, primarily from the academic community.

(3) *Agenda.* Review of the most recent earthquake data recorded in Southern California.

For more detailed information about the meeting, pleas call Dr. C. B. Raleigh, Research Geophysicist, Office of Earthquake Studies, Menlo Park, California 94025 (415) 323-2893.

James F. Devine,

Acting Director, U.S. Geological Survey.

[FR Doc. 80-27867 Filed 9-8-80; 11:42 am]

BILLING CODE 4310-31-M

INTERSTATE COMMERCE COMMISSION

[Notice No. 195]

Assignment of Hearing; Correction

September 2, 1980.

MC 30319 (Sub-151F), SOUTHERN PACIFIC TRANSPORT COMPANY of Texas and Louisiana, appearing page 54457, August 15, 1980 is corrected as follows:

MC 30319 (Sub-151F), SOUTHERN PACIFIC TRANSPORT COMPANY of Texas and Louisiana now being assigned for hearing on October 27, 1980 at Ft. Worth, TX location of hearing room will be designated later. (instead of continued hearing on September 29, 1980).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-27602 Filed 9-8-80; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-18 (Sub-31F)]

Chesapeake & Ohio Railway Co.—Abandonment Between Cincinnati and Fernald, Ohio; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided August 12, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, the public convenience and necessity permit the abandonment by the Chesapeake and Ohio Railway Company of a line of railroad known as Cheviot and Miami Subdivisions, extending from railroad milepost 1.68, valuation station 90+86.5, at or near Cincinnati, OH to railroad milepost 19.20, valuation station 1016+00, at or near Fernald, OH, a distance of 17.52 miles, in Hamilton County, OH, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.—Abandonment Goshen*, 360 I.C.C. 91 (1979), and further that potentially historical structures (in this case bridges) be maintained until such time as a determination concerning historical significance can be made. A certificate of pulic convenience and necessity permitting abandonment was issued to Chesapeake and Ohio Railway Company. Since no investigation was instituted, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than September 24, 1980. The offer, as filed, shall contain information required pursuant to § 1121.38(b)(2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective October 24, 1980.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-27601 Filed 9-8-80; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-43 (Sub-67F)]

Illinois Central Gulf Railroad Co.—Abandonment Near Black Bayou Junction and Minter City, Miss.; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided August 8, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, the public convenience and necessity permit the abandonment by the Illinois Central Gulf Railroad Company of a line of railroad known as the Tallahatchie District (portion), extending from railroad milepost 99.74 at Black Bayou Junction, MS, to milepost 103.82 at Minter City, MS, in Leflore and Tallahatchie Counties, MS, a distance of 4.08 miles, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.—Abandonment Goshen*, 360 I.C.C. 91 (1979). A certificate of public convenience and necessity permitting abandonment was issued to Illinois Central Gulf Railroad Company. Since no investigation was instituted, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than September 24, 1980. The offer, as filed shall contain information required pursuant to § 1121.38(b)(2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective October 24, 1980.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-27600 Filed 9-8-80; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. 326]

Permanent Authority Decisions; Decision-Notice

Decided: August 27, 1980.

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR § 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the Federal Register. Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulation. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. § 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. § 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient petitions for intervention, filed on or before October 9, 1980 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices on or before October 9, 1980, or the application shall stand denied.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

MC 2095 (Sub-31F), filed June 25, 1980. Applicant: KEIM TRANSPORTATION, INC., P.O. Box 226, 420 N. Sixth, Sabetha, KS 66534. Representative: Clyde N. Christey, KS Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. Transporting (1) *gypsum,* and *gypsum products,* and *building materials,* and (2) *materials, equipment, and supplies* used in the manufacture, installation and distribution of the commodities in (1) above, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Georgia-Pacific Corporation, Gypsum Division.

MC 106674 (Sub-450F), filed December 19, 1979, previously published in the Federal Register issue of March 27, 1980. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting *insulating materials* and *equipment and supplies* (except in bulk), used in the manufacture and installation of insulation materials, between Newark, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—This republication correctly states the territorial description.

MC 159535 (Sub-6F), filed February 28, 1980. Applicant: BULS EYE TRANSPORT, INC., Suite 2424, 33 North Dearborn St., Chicago, IL 60602. Representative: Patrick H. Smyth, Suite 521, 19 South LaSalle St., Chicago, IL

60603. Transporing *such commodities* as are used in the manufacture and distribution of new furniture, from points in IL, IN, KY, MA, MI, NC, NJ, SC, and WI, to Archbold, OH.

The following six (6) applications are republished to correction the docket number.Applicant: BULS EYE TRANSPORT, INC., Suite 2424, 33 North Dearborn St., Chicago, IL 60602. Representative: Patrick H. Smyth, Suite 521, 19 South LaSalle St., Chicago, IL 60603.

MC 144527 (Sub-5F), filed July 25, 1979, previously published on March 18, 1980, has been reassigned MC 150535F.

MC 144527 (Sub-6F), filed September 25, 1979, previously published on March 14, 1980, has been reassigned MC 150535 (Sub-1F).

MC 144527 (Sub-7F), filed November 6, 1979, previously published on May 13, 1980, has been reassigned MC 150535 (Sub-2F).

MC 144527 (Sub-8F), filed November 6, 1979, previously published on March 14, 1980, has been reassigned MC 150535 (Sub-3F).

MC 144527 (Sub-12F), filed December 27, 1979, previously published on March 27, 1980, has been reassigned MC 150535 (Sub-4F).

MC 144527 (Sub-13F), filed February 11, 1980, previously published on May 13, 1980, has been reassigned MC 150535 (Sub-5F).

[FR Doc. 80-27604 Filed 9-8-80; 8:45 am]
BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. OP3-013]

Permanent Authority Decisions; Decision-Notice

Decided: August 25, 1980.

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (eg., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its propose service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before October 24, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. On or before November 10, 1980, an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman, participating

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

MC 125254 (Sub-73F), filed August 14, 1980. Applicant: MORGAN TRUCKING CO., a corporation, P.O. Box 714, Muscatine, IA 52761. Representative: Larry D. Knox, 600 Hubbell, Des Moines, IA 50309. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 133805 (Sub-58F), filed August 21, 1980. Applicant: LONE STAR CARRIERS, INC., Route 1, Box 48, Tolar, TX 76476. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. government, between points in the U.S.

MC 135364 (Sub-44F), filed August 15, 1980. Applicant: MORWALL TRUCKING, INC., Box 76C R.D. 3, Moscow, PA 18444. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 135524 (Sub-155F), filed August 20, 1980. Applicant: G. F. TRUCKING COMPANY, a Corporation, P.O. Box 229, 1028 West Rayen Ave., Youngstown, OH 44501. Representative: George Fedorisin, 914 Salt Springs Rd., Youngstown, OH 44509. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 135605 (Sub-14F), filed August 19, 1980. Applicant: WILKINSON TRUCKING, INC., P.O. Box 25, Barton, AR 72312. Representative: C. Jack Pearce, 1000 Connecticut Ave., Suite 1200, Washington, DC 20036. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 138815 (Sub-2F), filed August 8, 1980. Applicant: MERCHANTS' DELIVERY, INC., 1027 Elm Hill Pike, Nashville, TN 37210. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37219. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 144874 (Sub-3F), filed August 15, 1980. Applicant: HARRY J. BERRY, d./b./a. BERRY TRUCKING, P.O. Box 658, Penns Grove, NJ 08069. Representative: Herbert Alan Dubin, 818 Connecticut Ave., NW., Washington, DC 20006. Transporting *general commodities* (except household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 151555F, filed August 14, 1980. Applicant: LAMONT L. ALBERS, Oakes, ND 58474. Representative: David C. Britton, 1425 Cottonwood St., Grand Forks, ND 58201. Transporting *food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers,* if such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S.

[FR Doc. 80-27603 Filed 9-9-80; 8:45 am]
BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[731-TA-29 (Preliminary)]

Asphalt Roofing Shingles From Canada; Notice of Change in Scheduled Date for Conference

AGENCY: United States International Trade Commission.

ACTION: The notice instituting the above-captioned investigation appearing in the Federal Register on September 4, 1980 (45 FR 58728) stated that the preliminary conference was scheduled for 10:00 a.m., e.d.t., on September 15, 1980. This notice is to inform all interested parties that the date of the conference has been changed to 10:00 a.m., e.d.t., September 22, 1980.

WRITTEN SUBMISSIONS: Will now be due on or before September 24, 1980.

FOR FURTHER INFORMATION CONTACT: Vera Libeau, Senior Investigator (202-523-0368).

By order of the Commission.

Issued: September 4, 1980.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-27707 Filed 9-8-80; 8:45 am]
BILLING CODE 7020-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; Extended Benefits; Special Notice of Extended Benefit Period in All States Beginning On July 20, 1980

A notice published in the Federal Register on Tuesday, August 26, 1980 (45 FR 56964), announced the beginning of a national Extended Benefit Period in all States, effective on August 24, 1980. This notice supersedes the earlier notice, and announces the beginning of a national Extended Benefit Period in all States, effective on July 20, 1980.

Background

Extended Benefits are payable only during an Extended Benefit Period, which is triggered on in a State when insured unemployment in the State, or nationally in all States, reaches the trigger levels set in the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note). Regulations implementing the Act appear in Part 615 of Title 20, Code of Federal Regulations (20 CFR Part 615), and prescribe the method of calculating the insured unemployment rates that trigger the Extended Benefit Periods on and off.

Prior to February 3, 1980, the regulations provided that insured unemployment rates were to be calculated by including claims for Extended Benefits as well as claims for regular benefits in the equation. Effective on February 3, 1980, the regulations were amended (see 45 FR 797 and 1015) to exclude claims for Extended Benefits from the calculations. The earlier notice, announcing the beginning of a national Extended Benefit Period on August 24, was based on the amended regulations. Had the regulations not been amended, a national Extended Benefit Period would have commenced on July 20.

In a suit brought by the American Federation of Labor and Congress of Industrial Organizations, and others, contesting the validity of the change in the regulations, the United States District Court for the District of Columbia held that the amended regulations were invalid, and in effect restored the regulations as they read prior to the amendments made earlier this year. The court's ruling is not being appealed, and as a result it is necessary to issue this notice announcing that the national Extended Benefit Period began as of July 20, 1980.

The national extended Benefit Period will remain in effect in all States for a minimum period of 13 weeks. It extends the Extended Benefit Periods that had triggered on in a number of States on the basis of State triggers prior to July 20. The court's ruling also has the effect of reinstating State-triggered Extended Benefit Periods that had triggered off in the States of Maine, New Jersey, and Rhode Island, on the basis of the amended regulations, and in those States the reinstated Extended Benefit Periods will extended through the week beginning on July 20, and thereafter until there are both State and national off triggers in those States. The national Extended Benefit Period will terminate at the end of the third week after the week in which there is a national off trigger, but any State in which there is a State or trigger in the week in which there is a national off trigger will continue in effect the Extended Benefit Period in that State until there is also a State off trigger.

Determination of "on" Indicator

Pursuant to delegation of authority from the United States Secretary of Labor, I, as Assistant Secretary for Employment and Training, have determined, in accordance with section 203(d)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 and the implementing regulations at 20 CFR 615.12, that the average rate of insured unemployment (seasonally adjusted) for all States, for the period consisting of the week ending on July 5, 1980, and the preceding 12 weeks, equalled or exceeded 4.5 percent.

Therefore, there was a national Extended Benefit "on" indicator for the week ending on July 5, 1980, and a national Extended Benefit Period began in all States on July 20, 1980.

Information for Claimants

During the Extended Benefit Period in each State claimants will be eligible to receive up to 13 weeks of Extended Benefits. This includes, and is not in addition to, any Extended Benefits received for weeks before or after the week beginning on July 20.

The employment security agency of each State has been notified of its responsibility to identify individuals who may be eligible for Extended Benefits in the national Extended Benefit Period, and to notify each individual personally. There should also be widespread publicity in each State of the retroactive beginning of the national Extended Benefit Period. In addition to those individuals who had established eligibility for Extended Benefits before July 20, in States with pre-existing Extended Benefit Periods, the individuals who become eligible after July 20 are those who exhausted all rights to regular benefits prior to July 20 and whose benefit years did not expire prior to that date, and those who exhaust their rights to regular benefits during the time the national Extended Benefit Period is in effect. The eligible exhaustees include those individuals covered by State unemployment compensation laws, and those individuals covered by the unemployment compensation laws for federal government employees and former members of the armed forces.

Individuals who believe they may be entitled to Extended Benefits in any State (including the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands), or who wish to inquire about their rights under this program, should contact the nearest employment office or unemployment compensation claims office in their locality.

Signed at Washington, D.C. on September 5, 1980.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 80-27783 Filed 9-8-80; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; Special Notice of Reinstatement of Extended Benefit Periods in the States of Maine, New Jersey, and Rhode Island

Notices were previously published in the Federal Register announcing the ending of Extended Benefit Periods in those three States on different dates in June and July. This notice announces the reinstatement of the Extended Benefit Periods in those States, and the continuation of the benefit periods without interruption through the week beginning on July 20, 1980, when a national Extended Benefit Period began in all States, including those three States.

Background

Extended Benefits are payable only during an Extended Benefit Period, which is triggered on in a State when insured unemployment in the State, or nationally in all States, reaches the trigger levels set in the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note). Regulations implementing the Act appear in Part 615 of Title 20, Code of Federal Regulations (20 CFR Part 615), and prescribe the method of calculating the insured unemployment rates that trigger the Extended Benefit Periods on and off.

Prior to February 3, 1980, the regulations provided that insured unemployment rates were to be calculated by including claims for Extended Benefits as well as claims for regular benefits in the equation. Effective on February 3, 1980, the regulations were amended (see 45 FR 797 and 1015) to exclude claims for Extended Benefits from the calculations. The earlier notices announcing the ending of Extended Benefit Periods in Main, on June 14, in New Jersey, on June 7, and in Rhode Island, on July 5, were based on the amended regulations. Had the regulations not been amended, the Extended Benefit periods in those States would have continued in effect until the national Extended Benefit Period began in all States on July 20, 1980.

In a suit brought by the American Federation of Labor and Congress of Industrial Organizations. and others, contesting the validity of the change in the regulations, The United States District Court for the District of Columbia held that the amended regulations were invalid, and in effect restored the regulations as they read prior to the amendments made earlier this year. The court's ruling is not being appealed, and as a result it is necessary to issue this notice announcing the reintstatement of the Extended Benefit Periods in the three States.

The Extended Benefits Periods in the three States therefore are reinstated, and will continue in effect until there are both national and State off triggers in those States. In a Federal Register notice also published today the Department has determined that a national Extended Benefit Period began in all States on July 20, 1980. The national Extended Benefit Period will remain in effect in all States for a minimum period of 13 weeks. As noted above, the extended Benefit Period in any State will trigger off only when there are both national and State off triggers. When there is a national off trigger, those States with State on triggers will remain in Extended Benefit Periods until they have State off triggers.

Redetermination of "off" Indicators

The heads of the employment security agencies of the States of Main, New Jersey, and Rhode Island, upon being advised of the ruling of the United States District Court for the District of Columbia and of the reinstatement of the regulations as they read prior to amendment, have recalculated the insured unemployment rates in those States for the week begining subsequent to February 2, 1980, in accordance with the State law and 20 CFR 615.12(e), and have determined that the insured uemployment rates in those States did not fall below the trigger points set in the laws of the States, and that there was not as previously reported an off indicator in those States.

Therefore, the Extended Benefit Periods in those States did not end as was previously announced, but have continued in effect to this date, and will remain in effect in each State until there are both national and State off indicators in that State.

Information for Claimants

During the reinstated Extended Benefit Period in each State claimants will be eligible to receive up to 13 weeks of Extended Benefits. This includes, and is not in addition to, any Extended Benefits received for weeks before or after the week following the previously announced ending of the Extended Benefit Periods in the three States.

The employment security agency of each State has been notified of its responsibility to identify individuals who may be eligible for Extended Benefits in the reinstated Extended Benefit Period, and to notify each individual personnally. There should also be widespread publicity in each State of the reinstatement of the Extended Benefit Period. In addition to those individuals who had establish eligibility for Extended Benefits before the Extended Benefit Period ended in those States, the individuals who become eligible after those dates are those who exhausted all rights to regular benefits after those dates and while the reinstated Extended Benefit Periods remain in effect. The eligible exhaustees include those individuals covered by the State unemployment compensation laws, and those individuals covered by the unemployment compensation laws for federal government employees and former members of the armed forces.

Individuals who believe that may be entitled to Extended Benefits in the States of Main, New Jersey, and Rhode Island, for weeks beginning after June 14, June 7, and July 5, respectively, or who wish to inquire about their rights under this program, should contact the nearest employment office or unemployment compensation claims office in their locality.

Signed at Washington, D.C., on September 5, 1980.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 80-27782 Filed 9-8-80; 8:45 am]

BILLING CODE 4510-30-M

Reallocation of Funds Under Title II-D of the Comprehensive Employment and Training Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Reallocation of funds under title II-D of the Comprehensive Employment and Training Act (CETA).

SUMMARY: Pursuant to 20 CFR 676.47, the Department of Labor announces the redistribution of funds reallocated under Title II-D of CETA.

FOR FURTHER INFORMATION CONTACT: Robert Anderson, Administrator, Office of Comprehensive Employment Development, 601 D Street, N.W., Room 5014, Washington, D.C. 20213, Telephone: 202-376-6254.

SUPPLEMENTARY INFORMATION: The Department of Labor has determined to provide the following CETA prime sponsors the amounts indicated of reallocated Title II-D funds. The Department of Labor reviewed the operations of these prime sponsors and determined that the prime sponsors needed and will be able to effectively utilize the amounts indicated prior to the end of fiscal year 1980.

Region I

None.

Region II

None.

Region III

Frederick, Maryland—$31,447.

Region IV

None.

Region V

None.

Region VI

BOS, Arkansas—$465,000.
Rapides Parish, Louisiana—$30,000.
BOS, New Mexico—$500,000.
Webb County, Texas—$100,000.

Region VII

Davenport/Scott County, Iowa—$37,800.

Region VIII

None.

Region IX

None.

Region X

None.

Signed at Washington, D.C., this 22d day of August 1980.

Charles B. Knapp,

Deputy Assistant Secretary for Employment and Training.

[FR Doc. 80-27720 Filed 9-8-80; 8:45 am]

BILLING CODE 4510-30-M

Reallocation of Funds Under Title II-D of the Comprehensive Employment and Training Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Final Notice of Funds Reallocated Under Title II-D of the Comprehensive Employment and Training Act (CETA).

SUMMARY: Pursuant to 20 CFR 676.47, the Department of Labor announces the reallocation of Title II-D funds in the amounts and from the prime sponsors indicated below.

FOR FURTHER INFORMATION CONTACT: Robert Anderson, Administrator, Office of Comprehensive Employment Development, 601 D Street, N.W., Room 5014, Washington, D.C. 20213, Telephone: (202) 376-6254.

SUPPLEMENTARY INFORMATION: The Department of Labor determined by reviewing actual enrollments with planned enrollments and rates of expenditures, that the CETA programs listed below were underutilizing available funds. The prime sponsors were provided with an opportunity to increase their performance before a final decision was made with respect to reallocation. The respective Governors, the general public and other prime sponsors were advised of the proposed reallocation of funds in the July 1, 1980, Federal Register.

At the end of 30 days from the date of notice to the prime sponsors, the Department again reviewed the prime sponsors' enrollments. The Department found, in the case of the prime sponsors listed below, that the amount of funds indicated for each prime sponsor could not effectively by utilized by the prime sponsor prior to the end of Fiscal Year 1980. As a result, the Department took final reallocation actions with respect to these prime sponsors. Prime sponsors which were listed in the July 1, 1980, Federal Register, and which are not listed below, were found to have improved their performance to the point where no reallocations were required.

Region I

None.

Region II

None.

Region III

Northern Virginia Consortium—$31,447.

Region IV

Seminole County, Florida—$71,190.
South Carolina Statewide Consortium—$1,607,780.
BOS-Tennessee—$352,230.

Region V

None.

Region VI

BOS-Louisiana—$495,000.
El Paso Consortium—$600,000.

Region VII

Woodbury County, Iowa—$37,800.

Region VIII

None.

Region IX

Hawaii-BOS—$55,320.

Region X

None.

Signed at Washington, D.C., this 22d day of August 1980.

Charles B. Knapp,

Deputy Assistant Secretary for Employment and Training.

[FR Doc. 80-27723 Filed 9-8-80; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefit Programs

[Application No. D-2036]

Proposed Exemption for Certain Transactions Involving the Arizona Machinery Co., Inc. Employees' Profit-Sharing Retirement Plan, Located in Avondale, Ariz.

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt a loan by the Arizona Machinery Company, Inc. Employees' Profit-Sharing Retirement Plan (the Plan) to Arizona Machinery Company, Inc. (the Employer), a party in interest, for the lesser of $516,000 or 40 percent of the Plan's assets. The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan, and the Employer.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before October 17, 1980.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2036. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department of Labor, telephone (202) 523-8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the

Department of an application for exemption from the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the trustees of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan, which was established in 1969, is a profit sharing plan with 115 participants and total assets as of June 18, 1980 of $1,051,000. The Employer is a closely-held corporation formed in 1959 to sell agricultural machinery and equipment.

2. The Plan proposes to loan the Employer the lesser of $516,000 or 40 percent of the Plan's assets receiving in return a promissory note collateralized with a first mortgage interest in two parcels of improved real property owned by the Employer consisting of commercial office, warehouse, and service facilities. The first parcel consists of two pieces of real property located at 225 North 1st Street (Miller Road), and on Edison Street west of Miller Road, both in Buckeye, Arizona. The second parcel is located at 197 West Warner Road, Chandler, Arizona. The loan is to be repaid in forty equal quarterly installments. The interest rate shall be 12 percent per annum for the first five years of the loan. On the fifth anniversary of the making of the loan, the interest rate shall be adjusted to the higher of 12 percent per annum, or the interest rate for comparable loans prevailing in Maricopa County, Arizona, as determined by an independent fiduciary manager.

3. The parcels of real porperty have been appraised by L. D. Ryan and Associates of Phoenix, Arizona, an MAI certified appraiser, as having a current fair market value of $1,435,000. Thus, the loan represents less than 50 percent of the value of the improved real property that will secure it. The appraiser also represents that the parcels could be sold within a reasonably short period, if need be, for no less than $775,000 and that they could be leased to independent tenants within a reasonably short period of time at rentals reflecting a fair market value of no less than $775,000. The Employer represents that it will add any additional collateral that may be required during the life of the loan to assure that the value of the collateral is at all times equal to at least 150 percent of the outstanding balance of the loan. During the life of the loan, the Employer will keep the collateral adequately insured against fire or other loss at its expense.

4. B. B. Cohen & Co., a mortgage and industrial banker located in Phoenix, Arizona, has represented that it would lend between $600,000 and $1,000,000 to the Employer for 10 years at 11.75 percent interest per annum, with annual payments of principal and interest based upon a 20 year amortization schedule with a balloon payment of the outstanding balance at the end of ten years. The loan would be secured by a first mortgage on the same parcels of improved real property that would serve as collateral for the proposed loan.

5. The trustees of the Plan will appoint Sheldon H. Rosenberg, C.P.A., Ltd. of Goodyear, Arizona, a certified public accountant who is experienced with pension and profit-sharing plans, to serve as an indpendent fiduciary manager of the proposed loan. Mr. Rosenberg has no other relationship with the Employer or the Plan. The fiduciary manager, who is responsible for making an indendent determination that the proposed loan is appropriate and suitable for the Plan, has examined the terms of the proposed loan and has initially determined that the proposed loan is appropriate and suitable for the Plan. The fiduciary manager will be required to make the same determination immediately prior to consummation of the transaction. The fiduciary manager will be empowered and directed to enforce the terms of the loan agreement between the Plan and the Employer, including making demand for timely payment, bringing suit or other appropriate process against the Employer in the event to default, keeping accurate records, and reporting at least annually to the trustees of the Plan on the performance of the loan, specifiaclly including whether the value of the collateral securing the loan remians equal to at lest 150 percent of the outstanding balance of the loan. The fiduciary manager will be entitled to such information from the Employer and the Plan as may reasonably be necessary to fulfill his responsibilities, and he shall be paid resonable compensation plus reimbursement for reasonable expenses, if any, including legal or appraisal fees or costs, as agreed upon with the trustees of the Plan. If Mr. Rosenberg is unable or unwilling to serve, dies, resigns, or becomes incapacitated, another unrelated, qualified, independent person or institution will be appointed to serve as an indendent fiduciary manager for the proposed loan.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the act because (1) the Plan will receive 12 percent interest or more on its investment, which is greater than the rate proposed by an unrealted party, (2) the loan is secured by parcels of improved real property with an appraised value that is more than twice the amount of the loan, (3) the Employer will insure the collateral and add additional collateral so that the value of collateral securing the loan is always at least 150 percent of the outstanding balance of the loan, (4) the loan will be administered by an independent fiduciary manager, and (5) the trustees and the fiduciary manager have determined that the transaction is appropriate for the Plan and is in the best interests of the Plan's participants and beneficiaries and protective of their interests.

Tax Consequences of Transaction

The Internal Revenue Service has determined that payment of amounts in excess of fair market value to a plan constitutes a contribution to the plan to the extent of such excess and therefore must be examined under Code sections 401(a)(4), 404, and 415.

Notice to Interested Persons

Within ten days after the notice of pendency is published in the Federal Register notice will be given to all Plan participants, beneficiaries, and other interested parties by mail, personal delivery, or by posting in the Employer's locations where particpants work and which are customarily used for notices to employees. Such notice shall include a copy of the notice of pendency of the exemption as proposed in the Federal Register and shall inform interested persons of their right to comment and request a hearing within the time period set forth in the notice of proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to a loan by the Plan to the Employer for the lesser of $516,000 or 40 percent of the Plan's assets, based on the terms and conditions set forth above, provided that the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time of consummation of the transaction.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 2nd day of September, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-27633 Filed 9-8-80; 8:45 am]
BILLING CODE 4510-29-M

[Exemption Application No. D-1498; Prohibited Transaction Exemption 80-64]

Exemption From the Prohibitions for a Certain Transaction Involving the Retirement Plan for Production, Maintenance, etc. Employees; the Retirement Plan for Management Employees; and the Retirement Plan for Sales, Clerical, etc. Employees of Neuhoff Bros. Packers, Inc., Located in Dallas, Tex.

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the purchase by Newcourt Industries, Inc. (formerly Neuhoff Brothers Packers, Inc.) (the Employer) of 21,075 shares of stock of the Employer from the Retirement Plan for Production, Maintenance, etc. Employees; the Retirement Plan for Management Employees; and the Retirement Plan for Sales, Clerical, etc. Employees of Neuhoff Brothers, Packers, Inc., (the Plans).[1]

FOR FURTHER INFORMATION CONTACT: Ms. Linda Hamilton of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-7462. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 27, 1980, notice was published in the Federal Register (45 FR 43501) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) and 406(b)(1) and (2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, for the purchase of stock by the Employer from the Plans. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice has been provided to all interested persons to comply with the requirements of notification to interested persons as set forth in the notice of pendency. Two public comments were received by the Department. One comment was in support of the requested exemption. The other comment did not relate to the transaction for which exemptive relief was proposed, but rather concerned the distribution of retirement benefits from the Plans. No requests for a hearing were received by the Department. The Department has reviewed the entire application and the comments that were received and has determined to grant the proposed exemption.

[1] The transaction for which an individual exemption is now being granted is within the scope of a final regulation adopted by the Department on August 1, 1980, 29 CFR § 2550.408(e). At the time of the application for exemption and the publication of the notice of pendency, the regulation had not been finalized. Therefore, having satisfied the statutory criteria contained in section 408(a) of the Act and section 4975(c)(2) of the Code, the Department is granting the requested exemption.

The notice of pendency was issued and the exemption is being granted solely by the department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4775(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interest of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 49759c)(1)(A) through (E) of the Code, shall not apply to the purchase by the Employer of 21,075 shares of stock of the Employer from the plans pursuant to the terms and conditions set forth in the application, provided that the amount paid for the stock is not less than the fair market value at the time of the consummation of the transaction.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C. this 2nd day of September, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-27832 Filed 9-8-80; 8:45 am]
BILLING CODE 4510-29-M

[Exemption Application No. D-1827; Prohibited Transaction Exemption 80-66]

Exemption From the Prohibitions for Certain Transactions Involving the First Oklahoma Bancorporation Participating Companies Savings and Thrift Plan Located in Oklahoma City, Okla.

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption exempts the sale of mortgages by the First Oklahoma Bancorporation Participating Companies Savings and Thrift Plan (the Bancorp Plan) to the First National Bank and Trust Company of Oklahoma City (First National), one of the contributing employers to the Bancorp Plan.

FOR FURTHER INFORMATION CONTACT: Paul R. Antsen of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523-8915. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 27, 1980, notice was published in the Federal Register (45 FR 43506) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for the sale of certain mortgages by the Bancorp Plan to First National. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has complied with the requirements of the notification to interested persons as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a

fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Bancorp Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Bancorp Plan.

Accordingly, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale for cash by the Bancorp Plan of first mortgages secured by real property to First National for an amount equal to the sum of the unpaid principal balances, provided this amount is not less than fair market value at the time of sale, plus any accrued unpaid interest to the date of sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 2nd day of September, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-27626 Filed 9-8-80; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1756]

Proposed Exemption for Certain Transactions Involving the William Michael Watterson, M.D., P.A. Profit Sharing Trust Located in Waynesville, N.C.

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed sale of a 10% limited partnership interest by the William Michael Watterson, M.D., P.A. Profit Sharing Trust (the Plan) to William Michael Watterson, plan participant, trustee and sole shareholder of the plan sponsor. The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan, and the general and limited partners of Professional Land Developers (the Partnership).

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before October 20, 1980.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-1756. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Daniel A. Brown, of the Department of Labor, telephone (202) 523-8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Plan, pursuant to section 408(a) of the Act and section 4975 (c)(2) of the Code, and in accordance with procedures set forth in ERISA procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Plan is a profit sharing plan which had six participants as of February 27, 1980. William Michael Watterson is the sole trustee of the Plan.

2. In 1977, upon recommendation of its investment advisor, the Plan purchased a 10% limited partnership interest in the Partnership. As of May 15, 1980, the Plan's total investment in the Partnership amounted to $8,561.97. The Partnership is a land development company with assets consisting of two parcels of unimproved real property located adjacent to the Haywood County Hospital in Haywood County, North Carolina.

3. The Partnership plans to construct a medical complex on the property. Pursuant to advice received prior to the Plan's acquisition of such Partnership interest, Dr. Watterson believed he could later purchase the interest from the Plan without restriction.

4. Several local banks contacted by the Partnership expressed an unwillingness to loan development money to the Partnership because of the greater risks they perceived under circumstances where some or all of the partners are employee benefit plans. In the absence of such financing, the real property has little investment potential.

5. The real property was appraised on November 29, 1979 by Francis J. Naeger, MAI, an independent appraiser, as having a fair market value of $135,200 for its highest and best use as a medical

complex, and $96,000 for other commercial uses.

6. The Plan proposes to sell, for cash, its 10% limited partnership interest to William Michael Watterson, M.D. Dr. Watterson has offered to purchase the Plan's interest in the Partnership for $13,520 (10% of the appraised value of $135,200) less its pro rata share of the Partnership liabilities. As of May 15, 1980, the Partnership's total liability amounted to $22,720 which was the outstanding indebtedness of the Partnership on the acquisition of the real property. The Plan's share of that liability on that date amounted to $2,272 (10% of the total $22,720).

7. In summary, the applicant represents that the proposed sale meets the criteria of section 408(a) of the Act because: (1) It will be a one time cash transaction; (2) It will remove a nonproductive asset from the Plan at a profit to the Plan; (3) The sales price will be determined by the greater of two independent appraisals; and (4) The trustee of the Plan has determined that the proposed transaction is appropriate for the Plan and is in the best interest of the Plan's participants and beneficiaries.

The Department notes that the proposed exemption pertains only to the sale of the Plan's limited partnership interest to William Michael Watterson, M.D. An exemption has not been requested with respect to the acquisition and holding of the limited partnership interest, nor does the proposed exemption, if granted, encompass any such transactions.

Notice to Interested Persons

Within ten days after its publication in the Federal Register, notice of the proposed exemption will be mailed directly or hand delivered to all participants and beneficiaries of the Plan. Such notice shall include a copy of the notice of pendency of the exemption as proposed in the Federal Register and shall inform these persons of their right to comment on or request a hearing regarding the requested exemption within the time period set forth above.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale of the 10 percent limited partnership interest in Professional Land Developers from the Plan to William Michael Watterson, M.D., for $13,520 (10 percent of the appraised value of $135,200) less its pro rata share of the Partnership liabilities provided that the price is not less than the fair market value of the Plan's partnership interest at the time of sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 2nd day of September, 1980.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-27635 Filed 9-8-80; 8:45 am]
BILLING CODE 4510-29-M

[Application No. D-1755]

Proposed Exemption for Certain Transactions Involving the Federick G. Wenzel, M.D., P.A. Profits Sharing Trust Located in Waynesville, N.C.

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed sale of a 25% limited partnership interest by the Frederick G. Wenzel, M.D., P.A. Profit Sharing Trust (the Plan) to Frederick G. Wenzel, plan participant, trustee and sole shareholder of the plan sponsor. The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan, and the general and limited partners of Professional Land Developers (the Partnership).

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before October 20, 1980.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of

Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-1755. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Daniel A. Brown, of the Department of Labor, telephone (202) 523-8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b) (1) and 406(b) (2) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975 (c) (1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Plan, pursuant to section 408 (a) of the Act and section 4975 (c) (2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganiztion Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Plan is a profit sharing plan which had four participants as of January 28, 1980. Frederick G. Wenzel and Judith P. Wenzel are the co-trustees of the Plan.

2. In 1977, upon recommendation of its investment advisor, the Plan purchased a 25% limited partnership interest in the Partnership. As of May 15, 1980, the Plan's total investment in the Partnership amounted to $21,404.93. The Partnership is a land development company with assets consisting of two parcels of unimproved real property located adjacent to the Haywood County Hospital in Haywood County, North Carolina.

3. The Partnership plans to construct a medical complex on the property. Pursuant to advice received prior to the Plan's acquisition of such Partnership interest, Dr. Wenzel believed he could later purchase the interest from the Plan without restriction.

4. Several local banks contacted by the Partnership expressed an unwillingness to loan development money to the Partnership because of the greater risks they perceived under circumstances where some or all of the partners are employee benefit plans. In the absence of such financing, the real property has little investment potential.

5. The real property was appraised on November 29, 1979 by Francis J. Naeger, MAI, an independent appraiser, as having a fair market value of $135,200 for its highest and best use as a medical complex, and $96,000 for other commercial uses.

6. The Plan proposes to sell, for cash, its 25% limited partnership interest to Frederick G. Wenzel, M.D. Dr. Wenzel has offered to purchase the Plan's interest in the Partnership for $33,800 (25% of the appraised value of $135,200) less its pro rata share of the Partnership liabilities. As of May 15, 1980, the Partnership's total liability amounted to $22,720 which was the outstanding indebtedness of the Partnership on the acquisition of the real property. The Plan's share of that liability on that date amounted to $5,680 (25% of the total $22,720).

7. In summary, the applicant represents that the proposed sale meets the criteria of section 408(a) of the Act because: (1) It will be a one time cash transaction; (2) It will remove a nonproductive asset from the Pan at a profit to the Plan; (3) The sales price will be determined by the greater of two independent appraisals; and (4) The trustees of the Plan have determined that the proposed transaction is appropriate for the Plan and is in the best interest of the Plan's participants and beneficiaries.

The Department notes that the proposed exemption pertains only to the sale of the Plan's limited partnership interest to Frederick G. Wenzel, M.D. An exemption has not been requested with respect to the acquisition and holding of the limited partnership interest nor does the proposed exemption, if granted, encompass any such tranaction.

Notice to Interested Persons

Within ten days after its publication in the Federal Register, notice of the proposed exemption will be mailed directly or hand delivered to all participants and beneficiaries of the Plan. Such notice shall include a copy of the notice of pendency of the exemption as proposed in the Federal Register and shall inform these persons of their right to comment on or request a hearing regarding the requested exemption within the time period set forth above.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interest persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing

should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale of the 25% limited partnership interest in Professional Land Developers from the Plan to Frederick G. Wenzel, M.D., for $33,380 (25% of the appraised value of $135,200) less its pro rata share of the Partnership liabilities, provided that the price is not less than the fair market value of the Plan's partnership interest at the time of sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 2nd day of September, 1980.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-27634 Filed 9-8-80; 8:45 am]
BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 80-65; Exemption Application No. D-1191]

Exemption From the Prohibitions for a Certain Transaction Involving the Figure World Profit-Sharing Trust Located in San Antonio, Tex.

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the sale of real property by the Figure World Profit Sharing Trust (the Plan) to Figure World, Inc. (the Employer).

EFFECTIVE DATE: This exemption is effective May 15, 1977.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Hamilton of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-7462. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 17, 1980, notice was published in the Federal Register (45 FR 41092) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) and 406(b)(1) and (2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for a transaction described in an application filed by the Employer and the Plan trustees. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicants have represented that they have complied with the requirements of the notification to interested persons as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

This application was filed with both the Department and the Internal Revenue Service. However the notice of pendency was issued and the exemption is being granted, solely by the Department because, effective December 31, 1978 section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Tax Consequences of Transaction

The Internal Revenue Service has determined that payment of amounts in excess of fair market value to a plan constitutes a contribution to the plan to the extent of such excess and therefore must be examined under Code sections 401(a)(4), 404, and 415.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, effective May 15, 1977, the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the

Code, shall not apply to the sale of real property located at 8103 Cross Creek, San Antonio, Texas, by the Plan to the Employer for the amount of $43,000, providing that amount was not less than the fair market value of the property at the time of the sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of this exemption.

Signed at Washington, D.C., this 2d day of September, 1980.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-27625 Filed 9-8-80; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1753]

Proposed Exemption for Certain Transactions Involving the Blue Ridge Urological Associates, P.A. Plan located in Waynesville, N.C.

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed sale of a 15% limited partnership interest by the Blue Ridge Urological Associates, P.A. Plan (the Plan) to Guy Abbate, plan participant, trustee and sole shareholder of the plan sponsor. The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan, and the general and limited partners of Professional Land Developers (the Partnership).

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before October 20, 1980.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-1753. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Daniel A. Brown, of the Department of Labor, telephone (202) 523-8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. the Plan is a profit sharing plan which had three participants as of January 28, 1980. Guy Abbate and Lucretia S. Abbate are the co-trustees of the Plan.

2. In 1977, upon recommendation of its investment advisor, the Plan purchased a 15% limited partnership interest in the Partnership. As of May 15, 1980, the Plan's total investment in the Partnership amounted to $12,842.96. The Partnership is a land development company with assets consisting of two parcels of unimproved real property located adjacent to the Haywood County Hospital in Haywood County, North Carolina.

3. The Partnership plans to construct a medical complex on the property. Pursuant to advice received prior to the Plan's acquisition of such Partnership interest, Dr. Abbate believed he could later purchase the interest from the Plan without restriction.

4. Several local banks contacted by the Partnership expressed an unwillingness to loan development money to the Partnership because of the greater risks they perceived under circumstances where some or all of the partners are employee benefit plans. In the absence of such finacing, the real property has little investment potential.

5. The real property was appraised on November 29, 1979 by Francis J. Naeger, MAI, an independent appraiser, as having a fair market value of $135,200 for its highest and best use as a medical complex, and $96,000 for other commercial uses.

6. The Plan proposes to sell, for cash, its 15% limited partnership interest to Guy Abbate, M.D. Dr. Abbate has offered to purchase the Plan's interest in the Partnership for $20,280 (15% of the appraised value of $135,200) less its pro rata share of the Partnership liabilities. As of May 15, 1980, the Partnership's total liability amounted to $22,720 which was the outstanding indebtedness of the Partnership on the acquisition of the real property. The Plan's share of that liability on that date amounted to $3,408 (15% of the total $22,720).

7. In summary, the applicant represents that the proposed sale meets the criteria of section 408(a) of the Act because: (1) It will be a one time cash transaction; (2) It will remove a nonproductive asset from the Plan at a profit to the Plan; (3) The sales price will be determined by the greater of two independent appraisals; and (4) The trustees of the Plan have determined that the proposed transaction is appropriate for the Plan and is in the best interest of the Plan's participants and beneficiaries.

The Department notes that the proposed exemption pertains only to the sale of the Plan's limited partnership interest to Guy Abbate, M.D. An exemption has not been requested with respect to the acquisition and holding of the limited partnership interest, nor does the proposed exemption, if granted, encompass any such transactions.

Notice to Interested Persons

Within ten days after its publication in the Federal Register, notice of the proposed exemption will be mailed directly or hand delivered to all participants and beneficiaries of the Plan. Such notice include a copy of the notice of pendency of the exemption as proposed in the Federal Register and shall inform these persons of their right to comment on or request a hearing regarding the requested exemption within the time period set forth above.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale of the 15% limited partnership interest in Professional Land Developers from the Plan to Guy Abbate, M.D., for $20,280 (15% of the appraised value of $135,200) less its pro rata share of the Partnership liabilities provided that the price is not less than the fair market value of the Plan's partnership interest at the time of sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 2nd day of September, 1980.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-27636 Filed 9-8-80; 8:45 am]
BILLING CODE 4510-29-M

[Application No. D-1754]

Proposed Exemption for Certain Transactions Involving the Ralph N. Feichter, M.D., P.A. Profit Sharing Trust Located in Waynesville, N.C.

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed sale of a 10% limited partnership interest by the Ralph N. Feichter, M.D., P.A., Profit Sharing trust (the Plan) to Ralph N. Feichter, plan participant, trustee and sole shareholder of the plan sponsor. The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan, and the general and limited partners of Professional Land Developers (the Partnership).

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before October 20, 1980.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-1754. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Daniel A. Brown, of the Department of Labor, telephone (202) 523-8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406b)(1) and 406(b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Plan is a profit sharing plan which had five participants as of February 27, 1980. Ralph N. Feichter is the sole trustee of the plan.

2. In 1977, upon recommendation of its investment advisor, the Plan purchased a 10% limited partnership interest in the Partnership. As of May 15, 1980, the Plan's total investment in the Partnership amounted to $8,561.97. The Partnership is a land development company with assets consisting of two parcels of unimproved real property located adjacent to the Haywood County Hospital in Haywood County, North Carolina.

3. The Partnership plans to construct a medical complex on the property. Pursuant to advice received prior to the Plan's acquisition of such Partnership interest, Dr. Feichter believed he could later purchase the interest from the Plan without restriction.

4. Several local banks contacted by the Partnership expressed an unwillingness to loan development money to the Partnership because of the greater risks they perceived under circumstances where some or all of the partners are employee benefit plans. In the absence of such financing, the real property has little investment potential.

5. The real property was appraised on November 29, 1979 by Francis J. Naeger, MAI, an independent appraiser, as having a fair market value of $135,200 for its highest and best use as a medical complex, and $96,000 for other commercial uses.

6. The Plan proposes to sell, for cash, its 10% limited partnership interest to Ralph N. Feichter, M.D. Dr. Feichter has offered to purchase the Plan's interest in the Partnership for $13,520 (10% of the appraised value of $135,200) less its pro rata share of the Partnership liabilities. As of May 15, 1980, the Partnership's total liability amounted to $22,720 which was the outstanding indebtedness of the Partnership on the acquisition of the real property. The Plan's share of that liability on that date amounted to $2,272 (10% of the total $22,720).

7. In summary, the applicant represents that the proposed sale meets the criteria of section 408(a) of the Act because: (1) It will be a one time cash transaction; (2) It will remove a nonproductive asset from the Plan at a profit to the Plan; (3) The sales price will be determined by the greater of two independent appraisals; (4) The trustee of the Plan has determined that the proposed transaction is appropriate for the Plan and is in the best interest of the Plan's participants and beneficiaries.

The Department notes that the proposed exemption pertains only to the sale of the Plan's limited partnership interest to Ralph N. Feichter, M.D. An exemption has not been requested with respect to the acquisition and holding of the limited partnership interest, nor does the proposed exemption, if granted, encompass any such transactions.

Notice to Interested Persons

Within ten days after its publication in the Federal Register, notice of the proposed exemption will be mailed directly or hand delivered to all participants and beneficiaries of the Plan. Such notice shall include a copy of the notice of pendency of the exemption as proposed in the Federal Register and shall inform these persons of their right to comment on or request a hearing regarding the requested exemption within the time period set forth above.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the cash sale of the 10% limited partnership interest in Professional Land Developers from the Plan to Ralph N. Feichter, M.D., for $13,520 (10% of the appraised value of $135,200) less its pro rata share of the Partnership liabilities provided that the price is not less than the fair market value of the Plan's partnership interest at the time of sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 2nd day of September, 1980.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-27669 Filed 9-8-80; 8:45 am]
BILLING CODE 4510-29-M

Office of the Secretary

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the

Department of Labor herein presents summaries of determinations regarding eligibility to apply for worker adjustment assistance issued during the period August 25–29, 1980.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Affirmative Determinations

In each of the following cases, it has been concluded that all of the criteria have been met, and certifications have been issued covering workers totally or partially separated from employment on or after the designated dates.

TA–W–8917; Kingston Krome Company, Kingston, Mississippi

A certification was issued covering all workers of the firm separated on or after *September 7, 1979.*

TA–W–8728; Fostoria Glass Company, Moundsville, West Virginia

A certification was issued covering all workers of the firm separated on or after *May 20, 1979.*

TA–W–7870; Academy Knitters, Williamstown, New Jersey

A certification was issued covering all workers of the firm separated on or after *June 23, 1979.*

TA–W–8641; Jaclyn Incorporated; Jaclyn Division, West New Jersey, New Jersey

A certification was issued covering all workers of the firm separated on or after *May 13, 1979.*

TA–W–8908; Powell/Adamson Enterprises, Incorporated, McCleary, Washington

A certification was issued covering all workers of the firm separated on or after *September 1, 1979.*

TA–W–9035; Allied Chemical Corporation; Automotive Prod. Division, Mt. Clemens, Mississippi

A certification was issued covering all workers of the firm separated on or after *May 30, 1979.*

TA–W–7792; Aloha Shake Company, Incorporated, Aloha, Washington

A certification was issued covering all workers of the firm separated on or after *March 28, 1979.*

TA–W–8021; Callins Industries, Incorporated, Hollandale, Mississippi

A certification was issued covering all workers of the Hollandale, Mississippi plant who were separated on or after *April 30, 1979.*

TA–W–9195; Callins Industries, Incorporated, Greenfield, Tennessee

A certification was issued covering all workers of the Greenfield, Tennessee plant who were separated on or after *April 30, 1979.*

With respect to workers producing aluminum electrolytic capacitors at the Greenfield, Tennessee plant, a certification was issued covering all such workers separated on or after April 30, 1979 and before *April 6, 1980.*

With respect to workers at the Greenfield plant producing dielectric capacitors, the investigation revealed that criterion (1) has not been met.

TA–W–7891/a G&L Shake Co., Inc., Hoquiam & Forks, Washington

A certification was issued covering all workers of the firm separated on or after *April 7, 1979.*

TA–W–8272; Quonset Shake Co., Port Angeles, Washington

A certification was issued covering all workers of the firm separated on or after *April 29, 1979.*

Negative Determination

In each of the following cases it has been concluded that at least one of the above criteria has not been met.

TA–W–8317; TRA Dean Fashions, Newark, New Jersey

The investigation revealed that sales by manufacturers for which the subject firm produced under contract did not decline.

TA–W–8997; Ardee Sportswear, Incorporated, Los Angeles, California

The investigation revealed that criterion (3) has not been met.

The subject firm is engaged exclusively in the importing of ladies sportswear.

TA–W–8053; AMIL Manufacturing Co., Incorporated, Shickshinny, Pennsylvania

The investigation revealed that sales by manufacturers for which the subject firm produced under contract did not decline.

TA–W–7973; Virginia Oak Tannery, Incorporated, Luray, Virginia

The investigation revealed that criterion (3) has not been met.

A survey of customers indicated that increased imports did not contribute importantly to workers separations at the firm.

TA–W–8956; Hooker Chemical Company, North Tonawanda, New York

The investigation revealed that criterion (3) has not been met.

Aggregate U.S. imports of *Phenolic resins and compounds* are negligible.

TA–W–9452; Westover Knitting Mills, Indian Orchard, Massachusetts

The investigation revealed that criterion (3) has not been met.

Aggregate U.S. imports of *finished fabric* did not increase as required, for certification.

TA–W–9715; Avondale Mills, Stevenson, Alabama

The investigation revealed that criterion (3) has not been met.

Aggregate U.S. imports of *carpet yarn* did not increase as required for certification.

TA–W–9015; JADCO Homes, Incorporated, Vassar, Michigan

The investigation revealed that criterion (3) has not been met.

There are no imports of new homes; and imports of automobiles may not be considered like or directly competitive with new homes.

TA–W–7255; Wagner Electric Corporation, Hazleton, Pennsylvania

The investigation revealed that criterion (3) has not been met.

A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–7744; Dayton Malleable, Incorporated; Ohio Division, Columbus, Ohio

The investigation revealed that criterion (3) has not been met.

A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

The investigation revealed that criterion (3) has not been met.

Aggregate U.S. imports of *Scrap* are negligible.

TA–W–7362; Singer Corporation, Elizabeth, New Jersey

With respect to workers producing industrial sewing machines, the

investigation revealed that criterion (3) has not been met.

A survey of customers indicated that increased imports did not contribute importantly to separations of workers producing industrial sewing machines at the firm.

With respect to workers producing consumer sewing machines, the investigation revealed that criterion (3) has not been met.

Aggregate U.S. imports of *consumer sewing machines* did not increase as required for certification.

With respect to workers producing parts for *industrial sewing machines*, a certificate was issued applicable to all such workers separated from employment on or after February 19, 1979.

With respect to workers producing parts for *consumer sewing machines* a certification was issued applicable to all such workers separated on or after April 20, 1979.

TA-W-9168, 9168a; Washington Steel Corporation, Houston, Pennsylvania—Washington, Pennsylvania

The investigation revealed that criterion (3) has not been met.

Aggregate U.S. imports of *sheet, strip & plate* did not increase as required for certification.

TA-W-8980; Ferroslag Division of Spang & Company, Larin, Ohio

The investigation revealed that criterion (3) has not been met.

Aggregate U.S. imports of *scrap* are negligible.

TA-W-8873; International Salt Co., Detroit, Michigan

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of salt did not increase as required for certification.

TA-W-9646; Gene Bell Chevrolet, Inc., Detroit, Michigan

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-7696; Olympic Cedar Product Inc., Amanda Park, Washington

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8883; Westvaco Corp., Detroit, Michigan

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of corrugated boxes are negligible.

TA-W-8983; The Levy Co., Chesterton, Indiana

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of scrap are negligible.

TA-W-9614; Mike Derian Ford, Inc., Mt. Clemens, Michigan

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-7726; Firestone Tire & Rubber Co., Butte, Montana

Investigation revealed that criterion (3) has not been met. The closure of the Butte, Montana store resulted from a corporate decision by Firestone to reduce operations at the retail level. Certifications of Firestone plants were based upon increased imports of tires by customers who did not buy their tires through Firestone retail stores.

TA-W-8938; C. J. Larger Felder & Sons, Inc., Pittsburgh, Pennslyvania

Investigations revealed that criterion (3) has not been met. Aggregate U.S. imports of scrap are negligible.

TA-W-10, 159-10, 160-10, 161; Bee Chemical Co., Belleville, Michigan, Gardena, California, Lansing, Illinois

Investigations revealed that criterion (3) has not been met. Aggregate U.S. imports of paint are negligible.

TA-W-9056; Tenaglia Construction, Inc., Leonard, Michigan

Investigation revealed that criterion (3) has not been met. Increased imports of automobiles are not like or directly competitive with carpentry activities performed by the petitioning group of workers.

TA-W-9324; National Garment Co., Hammonton, New Jersey

Investigation revealed that criterion (3) has not been met. Aggegate U.S. imports of ladies coats did not increase as required for certification. Further, sales by the subject firm increased in the first seven months of 1980 compared to the first seven months of 1979.

TA-W-9609; Detroit Body Products Division, Wixom, Michigan

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-9111, 9111a; Slab Fork Coal Co., Alpoca & Wyoming City, West Virginia

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of coal & coke did not increase as required for certification.

I hereby certify that the aformentioned determinations were issued during the period August 25-29th, 1980. Copies of these determinations are available for inspection in Room S-5314, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal working hours or will be mailed to persons who write to the above address.

Dated: September 3, 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-27716 Filed 9-8-80; 8:45 am]

BILLING CODE 4510-28-M

General Motors Corp.; Determinations Regarding Eligibility To apply for Worker Adjustment Assistance

In the matter of:

TA-W-6705: Delco Electronics Division, Kokomo, Indiana
TA-W-6783: General Motors Assembly Division, Baltimore, Maryland
TA-W-6877: Harrison Radiator Division, Buffalo, New York
TA-W-6917: General Motors Assembly Division, Lakewood, Georgia
TA-W-6999: Buick Assembly, Flint, Michigan
TA-W-7000: Cadillac Assembly, Detroit, Michigan
TA-W-7001: Chevrolet Motor Division, Bay City, Michigan
TA-W-7002: Chevrolet Motor Division, Buffalo, New York
TA-W-7003: Chevrolet Motor Division, Livonia, Michigan
TA-W-7004: Chevrolet Motor Division, Flint Manufacturing, Flint, Michigan
TA-W-7004A: Chevrolet Motor Division, Adrian, Michigan
TA-W-7005: Chevrolet Motor Division, Indianapolis, Indiana
TA-W-7007: Chevrolet Motor Division, Saginaw Plant, Saginaw, Michigan
TA-W-7008: Chevrolet Motor Division, Tonawanda, New York
TA-W-7009: Chevrolet Assembly, Flint, Michigan
TA-W-7010: Chevrolet Motor Division, Detroit Plants, Detroit, Michigan
TA-W-7011: Chevrolet Motor Division, Parma, Ohio
TA-W-7012: Chevrolet Motor Division, Flint Engine and Metal Fabricating, Flint, Michigan
TA-W-7013: Chevrolet Motor Division, Toledo, Ohio
TA-W-7014: Chevrolet Motor Division, Warren, Michigan
TA-W-7015: Oldsmobile Assembly, Lansing, Michigan
TA-W-7016: Pontiac Assembly, Pontiac, Michigan

TA-W-7018: Fisher Body Division, Fleetwood, Detroit, Michigan
TA-W-7019: Fisher Body Division, Cleveland, Ohio
TA-W-7021: Fisher Body Division, Grand Rapids Trim, Grand Rapids, Michigan
TA-W-7022: Fisher Body Division, Flint No. 1, Flint, Michigan
TA-W-7023: Fisher Body Division, Grand Blanc, Michigan
TA-W-7024: Fisher Body Division, Techumseh, Michigan
TA-W-7026: Fisher Body Division, Columbus, Ohio
TA-W-7027: Fisher Body Division, Fort Street, Detroit, Michigan
TA-W-7028: Fisher Body Division, Trenton, New Jersey
TA-W-7029: Fisher Body Division, Coldwater Road, Flint, Michigan
TA-W-7030: Fisher Body Division, Syracuse, New York
TA-W-7031: Fisher Body Division, Elyria, Ohio
TA-W-7032: Fisher Body Division, Lansing, Michigan
TA-W-7033: Fisher Body Division, Pontiac, Michigan
TA-W-7035: Fisher Body Division, Hamilton, Ohio
TA-W-7036: Fisher Body Division, Euclid, Ohio
TA-W-7037: Fisher Body Division, Pittsburgh Plant, McKeesport, Pennsylvania
TA-W-7038: Fisher Body Division, Detroit Central Plants, Detroit, Michigan
TA-W-7039: Fisher Body Division, Chicago Plant, Willow Springs, Illinois
TA-W-7040: Fisher Body Division, Livonia, Michigan
TA-W-7041: Fisher Body Division, Marion, Indiana
TA-W-7044: AC Spark Plug Division, Flint, Michigan
TA-W-7045: Delco Remy Division, Anderson, Indiana
TA-W-7046: Delco Remy Division, Muncie, Indiana
TA-W-7048: Guide Division, Anderson, Indiana
TA-W-7049: Guide Division, Monroe, Louisiana
TA-W-7050: Harrison Radiator Division, Lockport, New York
TA-W-7052: Delco Moraine Division, Dayton, Ohio
TA-W-7053: Delco Moraine Division, Fredericksburg, Virginia
TA-W-7055: New Departure-Hyatt Division, Sandusky, Ohio
TA-W-7056: New Departure-Hyatt Division, Clark, New Jersey
TA-W-7057: Saginaw Steering Gear Division, Saginaw, Michigan
TA-W-7059: GMC Truck and Coach Assembly Division, Pontiac, Michigan
TA-W-7065: Central Foundry Division, Danville, Illinois
TA-W-7066: Central Foundry Division, Saginaw, Michigan
TA-W-7067: Central Foundry Division, Defiance, Ohio
TA-W-7068: Central Foundry Division, Bedford, Indiana
TA-W-7070: Delco Electronics Division, Shreveport, Louisiana
TA-W-7071: General Motors Assembly Division, Doraville, Georgia
TA-W-7073: General Motors Assembly Division, South Gate, California
TA-W-7074: General Motors Assembly Division, Arlington, Texas
TA-W-7075: General Motors Assembly Division, Fremont, California
TA-W-7076: General Motors Assembly Division, Janesville, Wisconsin
TA-W-7078: General Motors Assembly Division, Leeds, Kansas City, Missouri
TA-W-7079: General Motors Assembly Division, Van Nuys, California
TA-W-7080: General Motors Assembly Division, Norwood, Ohio
TA-W-7081: General Motors Assembly Division, St. Louis, Missouri
TA-W-7082: General Motors Assembly Division, Lordstown, Ohio
TA-W-7305: Fisher Body Division, Kalamazoo, Michigan
TA-W-7603: Delco Products Division, Rochester, New York
TA-W-7782: Delco Products Division, Dayton, Ohio
TA-W-8017: Inland Division, Dayton, Ohio
TA-W-8105: Packard Electric Division, Brookhaven, Mississippi
TA-W-8106: Packard Electric Division, Warren, Ohio
TA-W-8107: Packard Electric Division, Clinton, Mississippi
TA-W-8572: Delco Air Conditioning Division, Dayton, Ohio
TA-W-8581: Creative Services Department, Chevrolet Motor Division, Detroit, Michigan
TA-W-8609: Fisher Body Division, Mansfield, Ohio
TA-W-8610: AC Spark Plug Division, Milwaukee Operations, Oak Creek, Wisconsin
TA-W-8611: Rochester Products Division, Rochester, New York
TA-W-8612: Delco Electronics Division, Indianapolis, Indiana
TA-W-8613: General Motors Assembly Division, Fairfax, Kansas
TA-W-8614: Delco Remy Division, Meridian, Mississippi

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor issued ten Certifications Regarding Eligibility to Apply for Worker Adjustment Assistance which were published in the Federal Register on March 28, 1980, (45 FR 20589); May 2, 1980, (45 FR 29433); May 9, 1980, (45 FR 30750); May 23, 1980, (45 FR 35050); June 6, 1980, (45 FR 38189); August 15, 1980, (45 FR 54490); August 19, 1980, (45 FR 55299); July 25, 1980, (45 FR 49703). The remaining two certifications were signed on August 1, 1980, (TA-W-7782) and on August 21, 1980, (TA-W-8581 and 8612) and will be published in the Federal Register at a later date.

The first certification mentioned above was applicable to all workers covered under petition TA-W-6783, cited above of the General Motors Assembly Division of the General Motors Corporation, Baltimore, Maryland.

The second certification mentioned above was applicable to all workers covered under petitions TA-W-6999, 7009, 7015-16, 7071, 7074-76 and 7078-80, cited above of the General Motors Corporation, Buick Assembly, Flint, Michigan; Chevrolet Assembly, Flint, Michigan; Oldsmobile Assembly, Lansing, Michigan; Pontiac Assembly, Pontiac, Michigan; GMAD-Doraville, Georgia; GMAD-Arlington, Texas; GMAD-Fremont, California; GMAD-Janesville, Wisconsin; GMAD-Leeds (Kansas City), Missouri; GMAD-Van Nuys, California; and GMAD-Norwood, Ohio.

The third certification mentioned above was applicable to all workers covered under petitions TA-W-7000, 7073 and 7081, cited above of the General Motors Corporation, Cadillac Assembly, Detroit, Michigan; GMAD-South Gate, California; and GMAD-St. Louis, Missouri.

The fourth certification mentioned above was applicable to all workers of component parts plants covered under petitions TA-W-7001-7004, 7004A, 7005, 7007-7008, 7010-7014, 7018-7019, 7021-7024, 7026-7033, 7035-7041, 7044-7046, 7048-7050, 7052-7053, 7055-7057, 7065-7068, 7070, and 7305, cited above of the General Motors Corporation's Chevrolet Motor Division, Bay City, Michigan; Buffalo, New York; Livonia, Michigan; Flint Manufacturing, Flint, Michigan; Adrian, Michigan; Indianapolis, Indiana; Saginaw Plants, Saginaw, Michigan; Tonawanda, New York; Detroit Plants, Detroit, Michigan; Parma, Ohio; Flint Engine and Metal Fabricating, Flint, Michigan; Toledo, Ohio; Warren, Michigan; and the Fisher Body Division's plants at Fleetwood, Detroit, Michigan; Cleveland, Ohio; Grand Rapids Trim, Grand Rapids, Michigan; Flint No. 1, Flint, Michigan; Grand Blanc, Michigan; Tecumseh, Michigan; Columbus, Ohio; Fort Street, Detroit, Michigan; Trenton, New Jersey; Coldwater Road, Flint, Michigan; Syracuse, New York; Elyria, Ohio; Lansing, Michigan; Pontiac, Michigan; Hamilton, Ohio; Euclid, Ohio; Pittsburgh Plant, McKeesport, Pennsylvania; Detroit Central Plants, Detroit, Michigan; Chicago Plant, Willow Springs, Illinois; Livonia, Michigan; Marion, Indiana; and AC Spark Plug Division Plant at Flint, Michigan, and Delco-Remy Division Plants at Anderson, Indiana; Muncie, Indiana; and the Guide Division Plants at Anderson, Indiana; Monroe, Louisiana; and the Harrison Radiator Division Plant at Lockport, New York; and the

Delco Moraine Division Plants at Dayton, Ohio; Fredericksburg, Virginia; and the New Departure-Hyatt Division Plants at Sandusky, Ohio; Clark, New Jersey; and the Saginaw Steering Gear Division Plant at Saginaw, Michigan; and the Central Foundry Division plants at Danville, Illinois; Saginaw, Michigan; Defiance, Ohio; Bedford, Indiana; and the Delco Electronics Division Plants at Shreveport, Louisiana; and the Fisher Body Division Plant at Kalamazoo, Michigan.

The fifth certification mentioned above was applicable to all workers covered under petition TA-W-7603, cited above of the General Motors Corporation, Delco Products Division, Rochester, New York.

The sixth certification mentioned above was applicable to all workers covered under petitions TA-W-8609-11 and 8614, cited above of the General Motors Corporation, Fisher Body Division, Mansfield, Ohio; AC Spark Plug Division, Milwaukee Operations, Oak Creek, Wisconsin; Rochester Products Division, Rochester, New York; and Delco-Remy Division, Meridian, Mississippi.

The seventh certification mentioned above was applicable to all workers covered under petition TA-W-8613, cited above of the General Motors Corporation, GM Assembly Division, Fairfax, Kansas.

The eighth certification mentioned above was applicable to all workers covered under petitions TA-W-8017, 8105-7 and 8572, cited above of the General Motors Corporation, Inland Division, Dayton, Ohio; Packard Electric Division, Brookhaven, Mississippi; Packard Electroc Division Warren, Ohio; Packard Electric Division, Clinton, Mississippi; and Delco Air Conditioning Division, Dayton, Ohio.

The ninth certification mentioned above was applicable to all workers covered under petition TA-W-7782, cited above of the General Motors Corporation, Delco Products Division, Dayton, Ohio.

The tenth certification mentioned above was applicable to all workers covered under petition TA-W-8581 and 8612, cited above of the General Motors Corporation Creative Services Department of the Chevrolet Motor Division, Detroit, Michigan and the Delco Electronics Division, Indianapolis, Indiana.

The Department issued a Notice of Determination which was published in the Federal Register on May 2, 1980, (45 FR 29442) applicable to all workers covered under petitions TA-W-6917, 7059 and 7082, cited above of the General Motors Corporation, General Motors Assemply Division Plant at Lakewood, Georgia; GMC Truck and Coach Assemply Division Plant at Pontiac, Michigan; and the General Motors Assembly Division Plant at Lordstown, Ohio.

The Department also issued a Notice of Revised Determination Regarding Eligibility to Apply for Worker Adjustment Assistance which was published in the Federal Register on June 20, 1980, (45 FR 41732) applicable to all workers covered under petitions TA-W-6705 and 6877, cited above of the General Motors Corporation, Delco Electronics Division at Kokomo, Indiana; and the Harrison Radiator Division in Buffalo, New York.

The Department issued a Notice of Amended Determination on Reconsideration which was published in the Federal Register on July 22, 1980, (45 FR 48998) applicable to all workers at the Fremont, California, plant of General Motors Corporation (TA-W-7075).

On the basis of additional information, the Office of Trade Adjustment Assistance, on its own motion, reviewed the certifications. It was found on review that workers at several subdivisions of General Motors Corporation, who were certified under the ten above-mentioned certifications, were not able to establish their individual eligibility for trade readjustment allowances since multiple certifications of various plants of the same firm did not allow for coverage of certain employees who had transferred from one certified worker group to another in the 52 weeks prior to their layoffs. Furthermore, on additional review, it was found that significant layoffs occurred prior to the original impact dates in 7 cases: TA-W-6877, TA-W-7000, TA-W-7002, TA-W-7014, TA-W-7033, TA-W-7048 and TA-W-7073.

The intent of the certification is to cover all workers at the several locations of the General Motors Corporation who were affected by the decline in the sales or production of passenger cars, pick-up trucks, light trucks, utility vehicles, vans and component parts for passenger cars, trucks, vans and general utility vehicles at 85 assembly and auxiliary plants of the General Motors Corporation, Detroit, Michigan, related to increased import competition. The Notices of Certifications, Notices of Determinations and Notices of Revised Determination, therefore are amended to include all workers at the 85 assembly and auxiliary plants of the General Motors Corporation, Detroit, Michigan, except those who were specifically denied under TA-W-6917, 7059 and 7082.

The separate certifications applicable to the General Motors Corporation are hereby amended as follows:

"All workers of the following facilities of the General Motors Corporation, except as specifically limited herein, who became totally or partially separated from employment on or after the indicated impact dates are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

TA-W	Plant	Impact date
6705	Delco Electronics Division, Kokomo, Indiana	Nov 1, 1979.
6783	General Motors Assembly Division, Baltimore, Maryland	Jan 7, 1979.
6877	Harrison Radiator Division, Buffalo, New York	July 1, 1979.
6917	General Motors Assembly Division, Lakewood, Georgia (light duty trucks)	Sept. 1, 1979.
6999	Buick Assembly, Flint, Michigan	Sept. 1, 1979.
7000	Cadillac Assembly, Detroit, Michigan	July 1, 1979.
7001	Chevrolet Motor Division, Bay City, Michigan	July 1, 1979.
7002	Chevrolet Motor Division, Buffalo, New York	July 1, 1979.
7003	Chevrolet Motor Division, Livonia, Michigan	Aug. 1, 1979.
7004	Chevrolet Assembly, Flint Manufacturing, Flint, Michigan	Aug. 1, 1979.
7004A	Chevrolet Motor Division, Adrian, Michigan	Aug. 1, 1979.
7005	Chevrolet Motor Division, Indianapolis, Indiana	June 1, 1979.
7007	Chevrolet Motor Division, Saginaw Plants, Saginaw, Michigan	July 1, 1979.
7008	Chevrolet Motor Division, Tonawanda, New York	June 1, 1979.
7009	Chevrolet Motor Division, Flint, Michigan	Aug. 1, 1979.
7010	Chevrolet Motor Division, Detroit Plants, Detroit, Michigan	July 1, 1979
7011	Chevrolet Motor Division, Parma, Ohio	June 1, 1979.
7012	Chevrolet Motor Division, Flint Engine and Metal Fabricating, Flint, Michigan	Aug. 1, 1979.
7013	Chevrolet Motor Division, Toledo, Ohio	July 1, 1979.
7014	Chevrolet Motor Division, Warren, Michigan	July 1, 1979
7015	Oldsmobile Assembly, Lansing, Michigan	Sept. 1, 1979.
7016	Pontiac Assembly, Pontiac, Michigan	July 1, 1979.
7018	Fisher Body Division, Fleetwood, Detroit, Michigan	July 1, 1979
7019	Fisher Body Division, Cleveland, Ohio	March 1, 1979.
7021	Fisher Body Division, Grand Rapids Trim, Grand Rapids, Michigan	May 1, 1979.
7022	Fisher Body Division, Flint No. 1, Flint, Michigan	Dec. 1, 1979.
7023	Fisher Body Division, Grand Blanc, Michigan	July 1, 1979.
7024	Fisher Body Division, Tecumseh, Michigan	July 1, 1979.
7026	Fisher Body Division, Columbus, Ohio	Mar. 1, 1979.
7027	Fisher Body Division, Fort Street, Detroit, Michigan	May 1, 1979.
7028	Fisher Body Division, Trenton, New Jersey	July 1, 1979.
7029	Fisher Body Division, Coldwater Road, Flint, Michigan	Jan. 28, 1979.
7030	Fisher Body Division, Syracuse, New York	May 1, 1979.
7031	Fisher Body Division, Elyria, Ohio	May 1, 1979.
7032	Fisher Body Division, Lansing, Michigan	Oct. 1, 1979.
7033	Fisher Body Division, Pontiac, Michigan	July 1, 1979.
7035	Fisher Body Division, Hamilton, Ohio	Oct. 1, 1979.
7036	Fisher Body Division, Euclid, Ohio	Sept. 1, 1979.
7037	Fisher Body Division, Pittsburgh Plant, McKeesport, Pennsylvania	July 1, 1979.
7038	Fisher Body Division, Detroit Central Plants, Detroit, Michigan	Mar. 1, 1979.
7039	Fisher Body Division, Chicago Plant, Willow Springs, Illinois	Nov. 1, 1979.
7040	Fisher Body Division, Livonia, Michigan	June 1, 1979.
7041	Fisher Body Division, Marion, Indiana	Apr. 1, 1979.
7044	AC Spark Plug Division, Flint, Michigan	July 1, 1979.
7045	Delco Remy Division, Anderson, Indiana	July 1, 1979.
7046	Delco Remy Division, Muncie, Indiana	Jan. 1, 1979.
7048	Guide Division, Anderson, Indiana	June 1, 1979.
7049	Guide Division, Monroe, Louisiana	Sept. 1, 1979.
7050	Harrison Radiator Division, Lockport, New York	June 1, 1979.
7052	Delco Moraine Division, Dayton, Ohio	July 1, 1979.
7053	Delco Moraine Division, Fredericksburg, Virginia	Dec. 1, 1979.
7055	New Departure-Hyatt Division, Sandusky, Ohuo	Sept. 1, 1979.
7056	New Departure-Hyatt Division, Clark, New Jersey	July 1, 1979.
7057	Saginaw Steering Gear Division,. Saginaw, Michigan	Aug. 1, 1979.
7059	GMC Truck and Coach Assembly Division, Pontiac, Michigan light and heavy trucks.	Sept. 1, 1979.
7065	Central Foundry Division, Danville, Illinois	July 1, 1979
7066	Central Foundry Division, Saginaw, Michigan	June 1, 1979.
7067	Central Foundry Division, Defiance, Ohio	Apr. 1, 1979.
7068	Central Foundry Division, Bedford, Indiana	June 1, 1979.
7070	Delco Electronics Division, Shreveport, Louisiana	Sept. 1, 1979.
7071	General Motors Assembly Division, Doraville, Georgia	June 1, 1979.
7073	GMAD, South Gate, California	July 1, 1979.
7074	GMAD, Arlington, Texas	Dec. 1, 1979.
7075	GMAD, Fremont, California	July 13, 1979.
7076	GMAD, Janesville, Wisconsin	Nov. 1, 1979.
7078	GMAD, Leeds, Kansas City, Missouri	Oct. 1, 1979.
7079	GMAD, Van Nuys, California	Oct. 1, 1979.
7080	GMAD, Norwood, Ohio	Nov. 1, 1979.
7081	GMAD, St. Louis, Missouri	June 1, 1979.
7082	GMAD, Lordstown, Ohio (vans)	Sept. 22, 1979.
7305	Fisher Body Division, Kalamazoo, Michigan	July 1, 1979.
7603	Delco Products Division, Rochester, New York	Aug. 1, 1979.
7782	Delco Products Division, Dayton, Ohio	Apr. 1, 1979.
8017	Inland Division, Dayton, Ohio	July 1, 1979.
8105	Packard Electric Division, Brookhaven, Mississippi	Nov. 1, 1979.
8106	Packard Electric Division, Warren, Ohio	June 1, 1979.
8107	Packard Electric Division, Clinton, Mississippi	Jan. 1, 1979.
8572	Delco Air Conditioning Division, Dayton, Ohio	Aug. 1, 1979.
8581	Creative Services Department, Chevrolet Motor Division, Detroit, Michigan	Jan. 1, 1979.
8609	Fisher Body Division, Mansfield, Ohio	Dec. 1, 1979.
8610	AC Spark Plug Division, Milwaukee Operations, Oak Creek, Wisconsin	Jan. 1, 1979.
8611	Rochester Products Division, Rochester, New York	Dec. 1, 1979.
8612	Delco Electronic Division, Indianapolis, Indiana	Jan. 1, 1979.
8613	General Motors Assembly Division, Fairfax, Kansas	Dec. 1, 1979.
8614	Delco Remy Division, Meridian, Mississippi	May 1, 1979.

Signed at Washington, D.C., this 28th day of August 1980.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 80-27715 Filed 9-8-80; 8:45 am]

BILLING CODE 4510-28-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade adjustment Assistance, at the address shown below, not later than September 19, 1980.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 19, 1980.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 2nd day of September 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
American Sunroof (union)	Warren, MI	8/19/80	8/15/80	TA-W-10,459	Chrysler products.
Briggs and Stratton Lock & Key Division (workers).	Perry, GA	8/20/80	8/18/80	TA-W-10,460	Locks and keys.
Barberton Puritan Plastics Products (workers)	Barberton, OH	8/19/80	8/12/80	TA-W-10,461	Boat fenders, dock bumpers, toys and sump bases.
Crown Cork and Seal Company (union)	Baltimore, MD	8/15/80	8/12/80	TA-W-10,462	Can and bottle fillers equipment.
CTS of Bernie, Inc. (workers)	Bernie, IN	8/20/80	8/15/80	TA-W-10,463	Electronic component.
Everlock Detroit, Inc. (workers)	Sterling Heights, MI	6/30/80	6/26/80	TA-W-10,464	Fasteners and assemblers for autos.
General Refractories Company (workers)	Pittsburgh, PA	8/18/80	8/13/80	TA-W-10,465	Refractory fire brick.
Industrial Fibre Products Co., Inc. (workers)	Utica, MI	8/11/80	8/06/80	TA-W-10,466	Parts for cars.
Lexington Metal Products Co. (workers)	Lexington, TN	7/29/80	7/25/80	TA-W-10,467	Automotive hardware.
C. G. Conn (workers)	Abilene, TX	8/19/80	8/13/80	TA-W-10,468	Brass musical instruments.
Furnco Construction Corporation (workers)	Lancaster, NY	8/15/80	8/8/80	TA-W-10,469	Steel plant maintenance work (quick repair for brick).
Garland Coal & Mining Company (UMWA)	Fort Smith AR	8/18/80	8/11/80	TA-W-10,470	Mine coal.
Huron Tool & Manufacturing Co. (UAW)	Lexington, MI	8/20/80	8/19/80	TA-W-10,471	Automatic screw machine products.
Lear Seigler Metal Products (workers)	Detroit, MI	8/19/80	8/12/80	TA-W10,472	Parts for autos.
Long-Airdox Co. (workers)	Oakhill, WV	8/15/80	8/11/80	TA-W10,473	Mining machinery, also, warehouse.
Metro Stamping & Manufacturing Co. (workers).	Detroit, MI	8/19/80	8/5/80	TA-W10,474	Metal stamping.
Midway Spring & Wire Company (UAW)	Mount Clemens, MI	8/19/80	8/13/80	TA-W10,475	Springs.
Racal Sportswear, Inc. (ILGWU)	Brooklyn, NY	7/14/80	7/8/80	TA-W10,476	Ladies' dresses and sportswear.
AM General Corp. (workers)	South Bend, IN	8/21/80	8/20/80	TA-W10,477	Military vehicles.
Brake & Steering Division of Bendix Corp. (UAW).	South Bend, IN	8/21/80	8/18/80	TA-W10,478	Power brakes and steering and drum brakes.
Glass Laboratories, Inc. (UAW)	Brooklyn, NY	8/18/80	8/13/80	TA-W10,479	Plastic extrusions.
Irvin Industries, Inc. (UTWA)	Blytheville, AR	8/21/80	8/19/80	TA-W10,480	Security shades for cars.
Kellers Aluminum Furniture of Indiana (Upholsterers International Union of North America).	Linton, IN	8/22/80	8/19/80	TA-W10,481	Promotional aluminum folding furniture.
Prestige Stamping, Inc. (workers)	Warren, MI	8/22/80	8/20/80	TA-W10,482	Metal stampings for auto manufacturers and structural washers.
Rockwell International—Powertool Division, Tupelo Plant (USWA).	Tupelo, MS	8/22/80	8/14/80	TA-W10,483	Stationary power tools.
Tiffin Crystal Division of Towle (American Flint Glass Workers Union).	Tiffin, OH	8/1/80	7/25/80	TA-W10,484	Table ware.
Vaungarde, Inc. (workers)	Owosso, MI	8/22/80	7/21/80	TA-W10,485	Auto body parts.
Burgess Mining & Construction Corp. (UMWA).	Birmingham, AL	8/21/80	8/19/80	TA-W-10,486	Mine coal.
Dana Corporation, Weatherhead Division (UAW).	Angola IN	8/22/80	8/18/80	TA-W-10,487	Safety brake valves.
Material Handling, Division of Union Metals Manufacturing Corp. (workers).	Macadonia, OH	8/21/80	8/18/80	TA-W-10,488	Car racks.
Modern Machine, Inc. (company)	Bay City, MI	8/21/80	8/18/80	TA-W-10,489	Special testing equipment, special tooling and experimental development parts for General Motors.
Motorola, Inc.—Auto Division (workers)	Arcade, NY	8/22/80	8/18/80	TA-W-10,490	Auto workers, underhood.
Natco Products Corp., Mat Division (workers).	West Warwick, RI	8/22/80	8/20/80	TA-W-10,491	Rug gripper matting.
RPI, Inc. (company)	Oscoda MI	8/21/80	8/7/80	TA-W-10,492	Rolled formed articles and stampings for auto industry.
RPI, Inc. (company)	Bay City, MI	8/21/80	8/7/80	TA-W-10,493	Rolled formed articles and stampings for auto industry.
Aluminum Company of America (union)	Point Comfort, TX	8/18/80	8/15/80	TA-W-10,494	Aluminum smelter.
Aluminum Company of America (union)	Rockdale, TX	8/18/80	8/15/80	TA-W-10,495	Aluminum smelter
Bristol Brass Co., Division of Bristol Ind. (union).	Bristol, CT	8/01/80	8/30/80	TA-W-10,496	Brass sheet, rod, and wire.
Continenal Mills (workers)	Gloversville, NY	8/15/80	8/13/80	TA-W-10,497	Cloth.
Joseph M. Herman Shoe Co. (workers)	Scarborough, ME	8/19/80	8/14/80	TA-W-10,498	Footwear.
Palm Beach Inc.—Formal Wear Division (workers).	Mineola, NY	8/08/80	8/05/80	TA-W-10,499	Sales representative of NY area for men's formal wear.
Plas-Tech, Inc. (workers)	Warren, MI	8/19/80	8/13/80	TA-W-10,500	Plastic parts for Ford.
Seco Knit Fabrics, Inc. (company)	Jersey City, NJ	8/21/80	8/18/80	TA-W-10,501	Knitters of double knit fabrics.
TRW/IRC (union)	Philadelphia, PA	8/19/80	8/13/80	TA-W-10,502	Carbon composition resistors.
Allegheny-Ludlum Steel Corp. (USWA)	Wallingford, CT	7/21/80	7/16/80	TA-W-10,503	Stainless strip and welded tubing.
Bangor Division of Collins & Aikman Corp. (workers).	Cowpens, SC	8/21/80	8/14/80	TA-W-10,504	Warp knit fabrics.
Barberton Recon Center (company)	Barberton, OH	8/20/80	8/14/80	TA-W-10,505	Sale of reconditioned automobiles.
Janesville Products (Upholsterers International Union of North America).	Franklin, OH	8/20/80	8/18/80	TA-W-10,506	Unwoven fiber padding used to insulate cars.
Nichols Buick-Pontiac-GMC, Inc. (workers)	Albion, MI	8/20/80	8/13/80	TA-W-10,507	New car dealership.
Quaker Alloy Casting Co. (workers)	Myerstown, PA	8/4/80	7/31/80	TA-W-10,508	High alloy castings valve bodies, pumps, and related products.
Reco Manufacturing Co. (company)	Springfield, NJ	5/13/80	5/7/80	TA-W-10,509	Wooded framed wall clocks.
Trim Trends, Inc. (company)	Clawson, MI	8/5/80	7/30/80	TA-W-10,510	Provided engineering and administrative services to affiliated companies.
U.S. Pattern Co., Inc. (workers)	Richmond, MI	8/25/80	8/21/80	TA-W-10,511	Wood and metal patterns for auto engines.
Acme Carbide Die, Inc. (workers)	Melvindale, MI	8/19/80	8/7/80	TA-W-10,512	Carbide cold forming dies.
Associated Spring Corp., Barns Group (UAW)	Plymouth, MI	8/19/80	8/13/80	TA-W-10,513	Specialty springs and stamp.
Aztec Chemical (workers)	Elyria, OH	8/19/80	8/13/80	TA-W-10,514	Chemicals.
Bechróth, Inc. (workers)	Brooklyn, NW	8/19/80	8/11/80	TA-W-10,515	Sheepskin tanners, and dyers.
General Tire & Rubber Company (IAM)	Batesville, AR	8/19/80	8/3/80	TA-W-10,516	Glass run channel belt strip, sponge weather strip.
J. Mar Glove Company (ACTWU)	Gloversville, NY	8/1/80	7/30/80	TA-W-10,417	Golf clubs and other sport gloves.
Kelly-Springfield Tire Company (URW)	Freeport, IL	8/18/80	8/13/80	TA-W-10,518	Farm tractor and passenger car tires and pick up tires.
Lazarus Fabrics (UAW)	New York, NY	8/15/80	8/13/80	TA-W-10,519	Drapery goods and upholstery.
Sealed Power Tappet Division (Johnson Products) (UAW).	Muskegon MI	8/19/80	8/12/80	TA-E-10,520	Auto engine parts.
Airco Welding Products Inc. (USWA)	Chester, WV	8/25/80	8/19/80	TA-W-10,521	Welding wire.
American Motor Sales Corp. (workers)	Minneapolis, MN	8/25/80	8/18/80	TA-W-10,522	Service and sales, parts division.
Merck & Co., Inc., Calgon Corp.—Neville Carbon Plant (USWA).	Pittsburgh, PA	8/25/80	8/22/80	TA-W-10,523	Activated carbon.

Appendix—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Ramsey Corporation of Sullivan (workers)	Sullivan, MO	8/25/80	8/8/80	TA-W-10,524	Piston rings.
U.S. Steel Corp., Research Laboratory (workers).	Monroeville, PA	8/13/80	8/7/80	TA-W-10,525	Laboratory research.
U.S. Steel Corp., Joliet Plant (workers)	Joliet, IL	8/8/80	8/30/80	TA-W-10,526	Carbon steel wire, wire products, and bars.
Wheeling-Pittsburgh Steel Corp., Benwood Plant (USWA).	Benwood, WV	8/22/80	8/19/80	TA-W-10,527	Carbon steel, structural shapes, plates, silicon steel, pipes and tubing, piling, round wire, stainless round wire, and welded pipe.
Wheeling-Pittsburgh Steel Corp., La-Belle Plant (USWA).	Wheeling, WV	8/22/80	8/19/80	TA-W-10,528	Nails.
Willow Run Rubber & Lining Co., Inc., (USWA).	Farmington, MI	8/25/80	8/20/80	TA-W-10,529	Ring assembly alternators.
Alma Plastic's Polymid Division (USWA)	Linwood, MI	8/7/80	8/4/80	TA-W-10,530	Interior plastic molded parts for autos.
A. M. Varityper Co. (IAM)	Hanover, NJ	8/25/80	8/20/80	TA-W-10,531	Computerized printing equipment.
Delta Tube and Fabricating Corp. (Iron Workers).	Holly, MI	8/25/80	8/21/80	TA-W-10,532	Steel fabricated for storage containers (racks).
Firestone Tire & Rubber Co. (URW)	Salinas, CA	7/31/80	7/29/80	TA-W-10,533	Tires.
Hyde Athletic Industries (workers)	Cambridge, MA	8/11/80	8/7/80	TA-W-10,534	Athletic footwear.
Roberts-Hart, Inc. (workers)	Keene, NH	5/8/80	5/7/80	TA-W-10,535	Work shoes and boots.
Skimmer, Inc. (workers)	Romulus, MI	8/11/80	7/29/80	TA-W-10,536	Conveyor belts for automobiles.
Stalwart Rubber Co. (URWA)	Burton, OH	8/11/80	8/4/80	TA-W-10,537	Automotive parts.
Supreme Knits, Inc. (workers)	Oakboro, NC	8/25/80	7/28/80	TA-W-10,538	Terry and velour cloth.
Canteen Service of Anderson (workers)	Anderson, IN	6/27/80	6/24/80	TA-W-10,539	Serve meals.
Fablock Mills Best Dyeing and Finishing (UAW).	Murray Hill, NJ	8/25/80	8/21/80	TA-W-10,540	Textile industries.
Ford Motor Credit Co. (workers)	Augusta, GA	8/11/80	8/5/80	TA-W-10,541	Finance company.
Hunter Stevens Company (workers)	Spencerport, NY	7/24/80	7/18/80	TA-W-10,542	Socket set fasteners.
Proper Mold & Engineering, Inc., (workers)	Roseville, MI	8/22/80	8/19/80	TA-W-10,543	Build plastic injection molds.
South River Coat Company (Shirt, Leisure, Robe Union.	South River, NJ	8/4/80	7/31/80	TA-W-10,544	Coats.
Toledo Pickling & Steel (workers)	Toledo, OH	8/14/80	8/11/80	TA-W-10,545	Pickled and slitted steel.
Uniroyal, Inc. Naugatuck Footwear Plan (company).	Naugatuck, CT	8/3/80	8/3/80	TA-W-10,546	Canvas footwear.

[FR Doc. 80-27719 Filed 9-8-80; 8:45 am]

BILLING CODE 4510-28-M

Senior Executive Service; Appointment of Member to the Performance Review Board

This amends Department of Labor Notice published in 44 FR 55240, dated September 25, 1979, listing Department of Labor members of the Performance Review Board of the Senior Execuive Service.

Lawrence E. Weatherford has been appointed to fill William B. Hewitt's unexpired three-year term as a member of the Performance Review Board of the Senior Executive Service. Mr. Weatherford's term will cover the period March 19, 1980, through December 31, 1982.

FOR FURTHER INFORMATION CONTACT:
Mr. Frank A. Yeager, Director of Personnel Management, Room C5526, FP Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone 202–523–9191.

Signed at Washington, D.C., this 3rd day of September, 1980.

Ray Marshall,

Secretary of Labor.

[FR Doc. 80-27722 Filed 9-8-80; 8:45 am]

BILLING CODE 4510-23-M

Senior Executive Service; Schedule for Awarding Performance Awards (Bonuses)

The Office of Personnel Management, in paragraph 3(b) of its Memorandum to Heads of Departments and Agencies, dated July 21, 1980, recommends that each agency "publish a notice in the Federal Register of the agency's schedule for awarding bonuses at least 14 days prior to the date on which the awards will be made."

Accordingly, the Department of Labor announces that bonuses will be paid on September 30, 1980.

FOR FURTHER INFORMATION CONTACT:
Mr. Frank A. Yeager, Director of Personnel Management, Room C5526, FP Building, 200 Constitution Avenue, NW., Washington, D.C. 20210, telephone 202–523–9191.

Signed at Washington, D.C., this 3rd day of September, 1980.

Ray Marshall,

Secretary of Labor.

[FR Doc. 80-27721 Filed 9-8-80; 8:45 am]

BILLING CODE 4510-23-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Panel (Choreography Fellowships); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Panel (Choreography Fellowships) to the National Council on the Arts will be held September 29, 1980 from 9:00 a.m. to 5:30 p.m., September 30, 1980 from

9:00 to 5:30 p.m., October 1, 1980 from 9:00 a.m. to 5:30 p.m., and October 2, 1980 from 9:00 a.m. to 5:30 p.m. in room 1422 at the Columbia Plaza Office Complex, 2401 E Street, N.W., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

August 29, 1980.

[FR Doc. 80-27697 Filed 9-8-80; 8:45 am]

BILLING CODE 7537-01-M

Music Panel (Joint Meeting of the Chamber Music and New Music Performance Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Panel (Joint meeting of the Chamber Music and New Music Performance Section) to the National Council on the Arts will be held September 26, 1980 from 9:00 a.m. to 5:30 p.m., in Room 1422 in the Columbia Plaza Office Complex, 2401 E Street, N.W.

A portion of this meeting will be open to the public on September 26, 1980 from 2:00 p.m. to 4:00 p.m. to discuss guideline revisions.

The remaining sessions of this meeting on September 26, 1980 from 9:00 a.m. to 2:00 p.m. and from 4:00 p.m. to 5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

August 27, 1980.

[FR Doc. 80-27698 Filed 9-8-80; 8:45 am]

BILLING CODE 7537-01-M

Music Panel (Chamber Music Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Panel (Chamber Music Section) will be held September 22, 1980 from 9:00 a.m. to 6:00 p.m., September 23, 1980 from 9:00 a.m. to 6:00 p.m., September 24, 1980 from 9:00 a.m. to 6:00 p.m., and September 25, 1980 from 9:00 to 6:00 p.m. in room 1422 in the Columbia Plaza Office Complex, 2401 E Street, N.W.

A portion of this meeting will be open to the public on September 25, 1980 from 2:00 p.m. to 4:00 p.m. to discuss guidelines.

The remaining sessions of this meeting on September 22, 1980 from 9:00 a.m. to 6:00 p.m., September 23, 1980 from 9:00 a.m. to 6:00 p.m., September 24, from 9:00 a.m. to 6:00 p.m., and September 25, 1980 from 9:00 a.m. to 2:00 p.m. and 4:00 p.m. to 6:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

John H. Clark,

Director, Office of Council and Panel Operation, National Endowment for the Arts.

August 26, 1980.

[FR Doc. 80-27699 Filed 9-8-80; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Behavioral and Neural Sciences; Subcommittee for Sensory Physiology and Perception; Meeting

In accordance with the Federal Advisory Committee act, P.L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Behavioral and Neural Sciences Subcommittee for Sensory Physiology and Perception.

Date and time: October 1, 1980, 7:00 p.m. to 10:00 p.m.; October 2 and 3, 1980, 9:00 a.m. to 5:00 p.m.

Place: Room 543, National Science Foundation, 1800 "G" Street NW., Washington, D.C. 20550.

Type of meeting: Part Open—Open 10/1—7:00 p.m. to 9:00 p.m. Closed 10/1–9:00 p.m. to 10:00 p.m. Closed 10/2–9:00 a.m. to 5:00 p.m. Closed 10/3—9:00 a.m. to 5:00 p.m.

Contact person: Dr. Terrence R. Dolan, Program Director, Sensory Physiology and Perception, Room 320, National Science Foundation, Washington, D.C. 20550.

Summary minutes: May be obtained from the Contact Person, Dr. Terrence R. Dolan, at the above-stated address.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in sensory physiology and perception.

Agenda: Open—October 1, 7:00 p.m. to 9:00 p.m. (1) Discussion of problems and perspectives in basic research in the sensory physiology and perception sciences. (2) Methods for improvement of the Sensory Physiology and Perception Program at the National Science Foundation. Closed—October 1, 9:00 p.m. to 10:00 p.m. and October 2 and 3, 9:00 a.m. to 5:00 p.m. To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(C), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92–463. The Committee Management Officer was delegated the authority to make such

determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator

September 4, 1980.

[FR Doc. 80-27665 Filed 9-8-80; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Behavioral and Neural Sciences; Subcommittee on Memory and Cognitive Processes; Meeting

In accordance with the Federal Advisory Committee Act, P.O. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee of Memory and Cognitive Processes of the Advisory Committee for Behavioral and Neural Sciences.

Date and time: October 9-10, 1980, 9:00 a.m.-5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, N.W., Room 421, Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Joseph L. Young, Program Director, Memory and Cognitive Processes Program, Room 320, National Science Foundation, Washington, D.C. 20550, telephone (202) 357-9898.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Memory and Cognitive Processes.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management officer pursuant to provisions of Section 10(d) of P. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

September 4, 1980.

[FR Doc. 80-27658 Filed 9-8-80; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Behavioral and Neural Sciences: Subcommittee on Social and Developmental Psychology; Meeting

In accordance with the Federal Advisory Committee Act, as amended P.L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Social and Developmental Psychology of the Advisory Committee for Behavioral and Neural Sciences.

Date and time: October 23-24, 1980: 9:00 a.m. to 5:00 p.m. each day.

Place: Room 643, National Science Foundation, 1800 G Street NW. Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Robert A. Baron, Program Director, Social and Developmental Psychology, room 320, National Science Foundation, Wash. D.C. 20550, telephone (202) 357-9485.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Social and Developmental Psychology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information: financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552 b (c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

September 4, 1980.

[FR Doc. 80-27660 Filed 9-8-80; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Behavioral and Neural Sciences; Meeting

In accordance with the Federal Advisory Committee Act, as amended, P.L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Neurobiology of the Advisory Committee for Behavioral and Neural Sciences.

Date and time: October 8, 9, & 10, 1980: 9:00 a.m. to 5:00 p.m. each day.

Place: Room 543, National Science Foundation, 1800 G Street, N.W., Washington, D.C.

Type of meeting: Closed.

Contact person: Dr. A. O. Dennis Willows, Program Director, Neurobiology Program, Room 320, National Science Foundation, Washington, D.C. 20550, telephone 202/357-7471.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Neurobiology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

September 4, 1980.

[FR Doc. 80-27661 Filed 9-8-80; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee on Special Research Equipment; Chemistry Subcommittee; Meeting

In accordance with the Federal Advisory Committee Act, P.L. 92-463, as amended, the National Science Foundation announces the following meeting;

Name: Advisory Committee on Special Research Equipment (2-year and 4-year colleges) (Chemistry Subcommittee).

Date/Time: October 6-7, 1980—9:00 a.m. to 5:00 p.m.

Place: Room 421, National Science Foundation, 1800 G Street, N.W., Washington, D.C.

Type of meeting: Closed.

Contact Person: Dr. Howard H. Hines, Program Director, Room 428, National Science Foundation, Washington, D.C. 20550, Telephone (202) 357-9615.

Purpose of Committee: To evaluate research equipment proposals.

Agenda: To review and evaluate research equipment proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92-463. The Committee Management Officer was delegated the authority to make such

determinations by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

September 4, 1980.

[FR Doc. 80-27666 Filed 9-8-80; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Physiology, Cellular, and Molecular Biology; Subcommittee on Cell Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, P.L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Cell Biology, of the Advisory Committee for Physiology, Cellular, and Molecular Biology.

Date and Time: October 1, 2, and 3, 1980; 9:00 to 5:00 p.m. each day.

Place: Room 643, National Science Foundation, 1800 G Street, N.W., Washington, DC 20550.

Type of meeting: Closed.

Contact Person: Dr. J. Eugene Fox, Program Director, Cell Biology Program, Room 332, National Science Foundation, Washington DC 20550. Telephone: 202/357-7474.

Purpose of Subcommittee: To provide advice and recommendations concerning support for research in Cell Biology.

Agenda: To review and evaluate research proposals as part of the selection process of awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. R. Winkler,

Committee Management Coordinator.

September 4, 1980.

[FR Doc. 80-27664 Filed 9-8-80; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Physiology, Cellular and Molecular Biology; Subcommittee on Developmental Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, P.L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Developmental Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology.

Date and time: October 15, 16, 17, 1980—starting at 9:00 a.m., to 5:00 p.m.

Place: Room 628, National Science Foundation, 1800 G Street, N.W. Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Mary E. Clutter, Program Director, Developmental Biology Program, Room 332, National Science Foundation, Washington, D.C. 20550, telephone 202/357-7989.

Purpose of subcommittee: To provide advice and recommendations concerning support of research in developmental biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92-463. The Committee Management officer was delegated the authority to make determinations by the Director, NSF July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

September 4, 1980.

[FR Doc. 80-27663 Filed 9-8-80; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Physiology, Cellular and Molecular Biology; Subcommittee on Molecular Biology, Group A; Meeting

In accordance with the Federal Advisory Committee Act, P.L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Molecular Biology, Group A, of the Advisory Committee for Physiology, Cellular and Molecular Biology.

Date and Time: October 16 and 17, 1980; 9:00 a.m. to 5:00 p.m. each day.

Place: Room 643, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of meeting: Closed.

Contact person: Dr. Arthur Kowalsky, Program, Biophysics Program, Room 329, National Science Foundation, Washington, DC 20550, Telephone: 202/357-7777.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Molecular Biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Office pursuant to provisions of Section 10(d) of P.L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. R. Winkler,

Committee Management Coordinator.

September 4, 1980.

[FR Doc. 80-27662 Filed 9-8-80; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Physiology, Cellular and Molecular Biology; Subcommittee on Regulatory Biology; Meeting

In accordance with the Federal Advisory Committee Act, P.L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Regulatory Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology.

Date and time: October 8, 9, 10, 1980 (8:30 a.m. to 5:00 p.m.).

Place: Conference Room 523, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of meeting: Closed.

Contact person: Dr. Bruce L. Umminger, Program Director, Regulatory Biology, Room 332, National Science Foundation, Washington, DC 20550, Telephone: 202/357-7975.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in regulatory biology.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92-463. The Committee Management Officer was delegated the authority to make such

determinations by the Director, NSF, on July 6, 1979.

M. R. Winkler,

Committee Management Coordinator.

September 4, 1980.

[FR Doc. 80-27659 Filed 9-8-80; 8:45 am]

BILLING CODE 7555-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 11324]

American General Shares, Inc.; Filing of Application Pursuant to Section 8(f) of the Investment Company Act of 1940 for an Order of the Commission Declaring That Applicant Has Ceased To Be an Investment Company

September 2, 1980.

Notice is hereby given that American General Shares, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company having outstanding two classes of common stock, American General Capital Growth Fund ("Capital Growth") and American General Income Fund ("Income"), 2777 Allen Parkway, Houston, Texas 77019, filed an application on August 4, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as that term is defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a Maryland corporation, registered under the Act on November 13, 1973. It is the successor in interest to a Delaware corporation which had registered under the Act, and filed a registration statement pursuant to Section 8(b) of the Act on November 1, 1940. Applicant's predecessor filed its initial registration statement (File No. 2-13945) under the Securities Act of 1933 in 1936, covering shares of Capital Growth and shares of Income. This registration statement was declared effective by the Commission in 1936, at which time an initial public offering of Applicant's securities commenced. At the close of business on August 31, 1979, Applicant had outstanding 30,374,627 shares of Capital Growth with a net asset value of $5.14 per share for a total net asset value of $155,990,273, and 13,730,790 shares of Income with a net asset value of $6.49 per share for a total net asset value of $89,138,072.

The application states that on August 31, 1979, Applicant was merged with and into American General Enterprise Fund, Inc. ("Enterprise"), pursuant to a Plan and Articles of Merger ("Merger") dated June 8, 1979. The Merger was approved by Applicant's board of directors on June 8, 1979, and by a majority of the holders of each outstanding class of its shares at a special meeting of Applicant's shareholders on August 23, 1979. Under the terms of the Merger all assets and liabilities of Applicant automatically became assets and liabilities of Enterprise, and each of the then outstanding shares of Applicant was converted into shares of common stock of Enterprise and each shareholder of Applicant received approximately .6667 shares of Enterprise for each share of Capital Growth then owned by such shareholder and .8428 shares of Enterprise for each share of Income then owned by such shareholder. The number of Enterprise shares issued in the Merger to Applicant's shareholders was determined on the basis of relative net asset values which were computed by Applicant and by Enterprise on the same basis.

Applicant states that it currently has no debts or other liabilities outstanding because all of its debts and liabilities were either assumed by Enterprise or paid by Applicant; that it has no assets; it has no securityholders; it is not a party to any litigation or administrative proceedings; and within the last 18 months Applicant has not, for any reason, transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant. Both Applicant and Enterprise bore their own expenses in connection with the Merger. Finally, Applicant states that its legal existence as a corporation ceased under the laws of the State of Maryland by the filing of Articles of Merger on August 31, 1979, with the State of Maryland's Department of Assessment and Taxation, and that it is not now engaged, and does not propose to engage, in any business activities since its corporate existence has ceased.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than September 29, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-27617 Filed 9-8-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11328]

Fund for Growth, Inc.; Proposal To Terminate Registration Pursuant to Section 8(f) of the Investment Company Act of 1940

September 2, 1980.

Notice is hereby given that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion, that Fund for Growth, Inc. ("Fund"), c/o arvey, Hodes & Mantynband, One North LaSalle Street, Chicago, IL 60602, registered under the Act as an open-end, diversified, management investment company, has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that the Fund was organized under the laws of the State of Maryland on August 16, 1967, and registered under the Act on October 23, 1967. The Fund filed a registration statement pursuant to the Securities Act of 1933 ("1933 Act") on Form S-5 to

make a public offering of shares of its capital stock. The files of the Commission further indicate that counsel for the Fund requested withdrawal of this registration statement pursuant to Rule 477 under the 1933 Act, and requested that the Fund be deregistered pursuant to Section 8(f) of the Act. This 1933 Act registration statement was ordered withdrawn on March 1, 1971; and, thus, the Fund never made a public distribution of its securities. The Fund has never filed any of the periodic reports required by the Act. Counsel for the Fund has stated that the Fund never had any assets or liabilities, and never engaged in any business operations. Thus, it appears that the Fund is not currently engaged in the business of an investment company.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment copany has ceased to be an investment company it shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than September 29, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the matter will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-27618 Filed 9-8-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 6237; 18-70]

Ladas & Parry Profit-Sharing Plan; Application

September 3, 1980.

Notice is hereby given that the law firm of Ladas & Parry (the "Firm" or "Applicant"), 10 Columbus Circle, New York, NY 10019, a New York partnership, has by letter, dated February 14, 1980, applied for an exemption from the registration requirements of the Securities Act of 1933 (the "Act") for any participations or interests issued in connection with its Profit-Sharing Plan (the "Plan") for certain partners and employees of the Applicant. All interested persons are referred to the application, which is on file with the Commission, for the facts and representations contained therein, which are summarized below.

I. Introduction

The Plan covers all of Applicant's qualifying partners and employees of whom there were approximately 250 as of August 6, 1980. All employees are eligible to participate in the Plan if they have attained age 25 and have completed one year of consecutive employment with the Firm. Participation in the Plan is automatic and each person becomes a Plan "participant" on July 1 or January 1 following his or her satisfaction of the eligibility requirements.

The Plan is of a type commonly referred to as a "Keogh" plan, which covers persons (in this case certain partners) who are "employees" within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954, as amended ("Code"). Therefore, even though the Plan is qualified under Section 401 of the Code, the exemption provided by Section 3(a)(2) is inapplicable to the interests in the Plan, absent an order of the Commission.

In relevant part, Section 3(a)(2) provides that the Commission may exempt from the provisions of Section 5 of the Act any interest or participation issued in connection with a pension or profit-sharing plan which covers employees, some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

II. Description and Administration of the Plan

Applicant states that the Plan became effective on February 1, 1978, and has the purpose of creating a Trust Fund for the provisions of benefits for its Participants upon their retirement, disability or death. The Internal Revenue Service ("IRS") has issued a ruling to the effect that the Plan is a qualified one under Section 401 of the Code. The Plan is an employee profit-sharing plan subject to the full fiduciary, reporting and disclosure requirements of the Employee Retirement Income Security Act of 1974 ("ERISA").

Applicant states that its contributions to the Trust Fund established by the Plan become fully vested and non-forfeitable upon the earliest of the following occurrences involving the Participant: his total and permanent disability; his death; completion of ten years of service with the Firm; termination of the Plan by the Firm; or complete discontinuance of contributions to the Plan by the Firm. The unvested portion of the Firm's contributions are forfeited by a Participant upon the termination of his employment and are applied to reduce the Firm's future contributions to the Trust Fund. Any voluntary contributions made by the Participant are fully vested at all times.

The Plan has a mandatory Firm contribution feature and a voluntary Participant contribution feature, both of which are based on a percentage of compensation. In general, the Firm's annual contribution made by it on behalf of each eligible Participant connot be more than the maximum amount deductible for federal income tax purposes nor more than 7% of that portion of a Participant's annual salary which exceeds $15,000. The Firm's contribution further is limited by formulas which take account of (1) the Participant's contributions and forfeitures and (2) the Participant's anticipated annual benefits under the Firm's defined benefit plan and under its defined contribution plan (i.e., this Plan). The Firm may determine in any year to contribute a lesser amount than that determined by these formulas or to make no contributions. A Participant is not required to contribute to the Plan, but is permitted to make voluntary contributions which may not exceed the greater of (1) 10% of his aggregate earnings in that year or (2) 10% of these

earnings plus 10% of those for every other year in which he is a Participant less any amount previously contributed by him to the Plan.

Applicant states that the Firm is designated as the Administrator of the Plan. The Firm's Management Committee must appoint an Administrative Committee for the Plan and one or more Trustees for the Plan and can appoint one or more Investment Managers. The Administrative Committee has been appointed and three Trustees, all partners in the Firm, have been appointed; as yet, no Investment Manager has been designated. Applicant states that at the request of a Participant other than a partner, the Trustees may purchase a life insurance policy on his behalf in an amount defined by the Plan. The Trustees shall own such policies, except that the right to name and change a beneficiary shall be exercised by the Trustee in accordance with the written direction of the Participant. At his own expense, such a Participant may direct the Trustee to purchase any supplemental insurance benefits which may be available.

Contributions not invested in insurance policies are retained in the Trust Fund, which the Trustees are authorized to manage, invest and reinvest in such manner as they determine, within their discretion, is in the best interests of the Fund and the Participants, except to the extent such authority is delegated to an Investment Manager and except to the extent the Administrative Committee directs that the Trust Fund be used to make limited loans to Participants or to pay the expenses of administering the Fund. Except as it regards the life insurance option, a Participant has no right to direct the manner in which any portion of that Fund is invested or administered.

Applicant contends that were the Firm a corporation, rather than a partnership, interests or participations issued in connection with the Plan would be exempt from registration under Section 3(a)(2) of the Act, because no person who would be an "employee" within the meaning of Section 401(c)(1) of the Code would participate in the Plan. Applicant argues that the mere fact that it conducts its business as a partnership rather than as a corporation should not result in a requirement that interests in the Plan be registered under the Act.

Applicant also states that it is engaged in furnishing legal services which involve financially sophisticated and complex matters, exercises extensive administrative control over the Plan, and believes that it is able to represent adequately its own interests and those of its partners and employees without the protection of the registration requirements of the Act. Applicant believes that the rigorous disclosure requirements of ERISA and the fiduciary standards and duties imposed thereunder are adequate to provide full protection to the participants.

Finally, Applicant argues that the characteristics of the Plan are essentially typical of those maintained by many single corporate employers and that the legislative history of the relevant language in Section 3(a)(2) of the Act does not suggest any intent on the part of Congress that interests issued in connection with single-employer Keogh plans necessarily should be registered under the Act. Applicant argues that its Plan is distinguishable from multi-employer plans or uniform prototype plans designed to be marketed by a sponsoring financial institution or promoter to numerous unrelated self-employed persons and that these latter plans are the type of plans Congress intended to exclude from the Section 3(a)(2) exemption.

For all of the foregoing reasons, Applicant believes that the Commission should issue an order finding that an exemption from the provisions of Section 5 of the Act for interests or participations issued in connection with the Plan is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than September 29, 1980 at 5:30 p.m., submit to the Commission a request for a hearing on the matter, accompanied by a statement of the nature of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he or she may request to be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the matter will be issued as of course following September 29, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-27866 Filed 9-8-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11329; 812-4598]

National Municipal Trust, et al.; Application

September 3, 1980.

In the matter of National Municipal Trust, National Municipal Trust, Special Trusts, National Government Securities Trust, National Corporate Trust, Thomson McKinnon Securities Inc., Piper, Jaffray & Hopwood Incorporated, A. G. Edwards & Sons, Inc., Oppenheimer & Co. Inc., c/o Thomson McKinnon Securities Inc., One New York Plaza, New York, New York 10004.

Notice is hereby given that National Municipal Trust ("Municipal Trust"), National Municipal Trust, Special Trusts ("Special Trusts"), National Government Securities Trust ("Government Trust"), National Corporate Trust ("Corporate Trust"), registered under the Investment Company Act of 1940 ("Act"), as unit investment trusts (collectively referred to as the "Trusts") and Thomson McKinnon Securities Inc., Piper, Jaffray & Hopwood Incorporated, A. G. Edwards & Sons, Inc. and Oppenheimer & Co., Inc. (all such securities firms hereinafter referred to as the "Sponsors," and collectively with the Trusts, the "Applicants") filed an application on January 22, 1980 and amendments thereto on August 27, and September 2, 1980, for an order of the Commission (1) pursuant to Section 6(c) of the Act exempting them from the provisions of Section 22(d) of the Act and (2) pursuant to Section 11 of the Act permitting the Trusts to offer their units at net asset value plus a fixed dollar sales charge pursuant to a conversion option. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

The investment objectives of Municipal Trust and Special Trusts are tax-exempt income and conservation of capital through an investment in a diversified portfolio of tax-exempt bonds. All of such bonds are obligations issued by or on behalf of states, counties, territories, possessions and

municipalities of the United States and/or authorities, agencies, instrumentalities or political subdivisions thereof, the interst on which in the opinion of counsel to the various issuers of such bonds is exempt from all federal income taxes under existing law. The objectives of the Corporate Trust are a high level of current income and preservation of principal through an investment in a diversified portfolio of corporate securities, and the objectives of the Government Trust are safety of capital and a high level of interest income through investment in a diversified portfolio of taxable securities guaranteed or backed by the full faith and credit of the United States. At the present time more than 50 series of the Trusts have been issued. It is anticipated that further series will be created in full compliance with the representations herein made concerning the respective series now outstanding.

Applicants state that a separate trust. indenture is entered into each time a series of a Trust is created and the securities to comprise its portfolio are deposited with one or more trustee banks (the "Trustee(s)"). Pursuant to the related indenture the Trustee may dispose of securities when events occur which may affect their investment stability and must sell securities if necessary for the payment of the redemption price of units tendered for redemption. In the case of the Municipal Trust and Special Trust, proceeds from such sales must be distributed in partial liquidation to unitholders, while such proceeds may be reinvested in the case of the Corporate and Government Trusts subject to certain limitations.

The Applicants propose to offer, subject to the conditions described below, a conversion option (the "Plan") to unitholders of the various series of the Trusts. The purpose of the Plan is to provide investors in each of the Trusts a convenient means of transferring interests as their investment requirements change. The Sponsors contemplate holding open this option at all times although they reserve the right to modify, suspend or terminate the Plan at any time without further notice to unitholders. A unitholder wishing to dispose of his units for whch a market is maintained will have the option to convert his units into units of any other series of the same Trust or of any series of any other Trust for which units are available for sale in the secondary market and the Sponsors are participating in the Plan. While it is not presently contemplated that unitholders would be permitted to exchange their units into units of other series which are available during the initial offering, the Sponsors might determine at some future date to permit such exchanges. When a unitholder notifies the Sponsors of his desire to exercise such a conversion option, the Sponsors will mail a current prospectus for units of each series that the unitholder indicates interest and which the Sponsors have available to offer to the unitholders as a result of acquisitions by them in the secondary market. The unitholder may then select the series into which he desires his investment converted.

Applicants indicate that the conversion transaction will operate in a manner essentially identical to any secondary transaction, except that Applicants propose to allow a reduced sales charge in a transaction under the Plan. At the present time, except in the case of Series of the Government Trust, for which the Sponsors' repurchase price is based on the offering side evaluations, units in the Trusts are repurchased by the Sponsors of the Trusts at the per unit price based on the aggregate bid side evaluations of the underlying securities in the portfolio of the series and are resold at that price plus a specified sales charge which is a percentage of that price. Applicants propose to sell units in the secondary market under the Plan at the public offering price plus a fixed sales charge of $25 per unit except for unitholders of a series with a sales charge less than the sales charge of the series into which they desire their investment converted. Such unitholders must have held their units for a period of at least six months in order to exercise the conversion option or agree to pay a sales charge based on the greater of $25 per unit or an amount which together with the initial sales charge paid in connection with the acquisition of units being exchanged equals the normal sales charge of the series into which the investment is being converted determined as of the date of exchange.

Section 11(c) of the Act provides, among other things, that exchange offers involving registered unit investment trusts are subject to the provisions of Section 11(a) of the Act irrespective of the basis of exchange. Section 11(a) of the Act provides, in pertinent part, that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make, or cause to be made, an offer to the holder of a security of such company or any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the prospectus. None of the exemptions from the provisions of that section provided by Rule 22d-1 applies to the Plan. The Applicants therefore would be unable to proceed with the Plan unless, pursuant to Section 6(c), the Commission exempts the Plan from the provisions of Section 22(d).

Section 6(c) of the act provides, in pertinent part, that the Commission by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities, or transactions from any provision of the Act or any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

The Applicants state that under the proposed Plan, a person desiring to dispose of units of one series and acquire units of another series may wish to do so for a number of reasons, such as changes in his or her particular investment goals or requirements (which might lead to a decision that he or she prefers taxable income to tax-exempt income) or in order to take advantage of possible tax benefits flowing from the exchange. Taking these factors into account, it is likely that there will be a continuing need to assess an investor's individual financial and tax position and in all probability the account executives of the Sponsors will actively participate in financially counseling the investor as to the proper course of action to follow considering all of the relevant investment factors involved. However, the fact that the investor is an existing customer whose essential investment needs have been identified should produce some transaction savings. Further, in view of the fact that all of the Trust are very similar investment vehicles, an exchanging unitholder may require somewhat less advice than if he was acquiring an interest in an entirely different kind of investment.

Applicants assert that the reduced charge as set forth in the Plan is a reasonable and justifiable expense to be

allocated to the broker for his professional assistance in connection with a conversion transaction. Further, Applicants contend that the sales charge compares favorably to the regular sales charges which are currently allocated to broker-dealers in the sale of units in any primary and secondary sales of the Trusts. Thus, the Sponsors submit that a sales charge of $25 per unit is warranted in that such charges should cover reasonable costs related to the conversion of units under the Plan and yet give participants an opportunity to share in cost savings.

Notice is further given that any interested person may, not later than September 29, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-27667 Filed 9-8-80; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Proposed License No. 01/01-0309]

Application for License To Operate as a Small Business Investment Company; Alta Capital Corp.

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Alta Capital Corporation (Applicant), 75 Federal Street, Boston, Massachusetts 02110, with the Small Business Administration pursuant to 13 CFR 107.102 (1980).

The Officers, Directors and Stockholder are as follows:

William P. Egan, 75 Federal Street, Boston, Massachusetts 02110, President and Director.

Craig L. Burr, 75 Federal Street, Boston, Massachusetts 02110, Treasurer and Director.

Jean Deleage, 475 Sansome Street, San Francisco, California, Director.

Andrew L. Nichols, 60 State Street, Boston, Massachusetts 02109, Clerk.

Alta Company Limited Partnership,[1] 75 Federal Street, Boston Massachusetts 02110, 100 percent.

Burr, Egan, Deleage & Co., Inc., 75 Federal Street, Boston, Massachusetts 02110, Investment Advisor.

The Applicant, a Massachusetts corporation, will begin operations with $2,000,000 Paid-in Capital and Paid-in Surplus. The Applicant's Investment Advisor maintains offices in Boston, Massachusetts and San Francisco, California, and accordingly the Applicant may be expected to invest in small businesses located in reasonable proximity to these cities.

Matter involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is hereby given that any person may not later than September 24, 1980 submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Associate Administrator for Investment, Small Business Administration, 1141 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Boston, Massachusetts.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 29, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-27734 Filed 9-8-80; 8:45 am]

BILLING CODE 8025-01-M

[1] Messrs. Egan, Burr and Deleage are each a General Partner of Alta Company Limited Partnership, together with TM Resources Inc., a subsidiary of Thomson McKinnon Securities, Inc. The following two Limited Partners of Alta Company Limited Partnership own a 10 or more percent interest therein: INOVELF, c/o Elf Aquitaine Development, 9 West 57th Street, New York, New York 10019; Rucal & Co., c/o University of California, Treasurer's Office, 615 University Hall, Berkeley, California 94270.

[License No. 02/02-0399]

Application for a License To Operate as a Small Business Investment Company; Noro Capital Corp.

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to Section 107.102 of the Regulations governing small business investment companies (13 C.F.R. 107.102 (1980)), under the name of Noro Capital Corporation (Applicant) for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended, and the Rules and Regulations promulgated thereunder.

The Applicant is incorporated under the laws of the State of New York, and it will commence operations with a capitalization of $1,000,000.

The Applicant will have its place of business at 230 Park Avenue, Suite 1260, New York, New York 10017, and it intends to conduct operations primarily in the State of New York.

The officers, directors and ten percent (10%) or more stockholders of the Applicant will be:

Harvey J. Wertheim, 9 Rawlings Drive, Melville, New York 11746, President, Treasurer, Director.

Elizabeth Wehner, 630 W. 264th Street, Riverdale, New York 10471, Secretary, Assistant Treasurer.

John H. French II, 151 E. 72nd Street, New York, New York 10023, Director.

Cydney R. Meltzer, 221 Clinton Street, Brooklyn, New York 11201, Assistant Secretary.

Daniel Cornelis van Eibergers Santhagens van Oldebarneveltweg 26, Wassenaar, Director.

*Noro Ventures, N.V. J.B. Corsiraweg 6, Willemstad, Curacao, Parent, 100%.

The Applicant will conduct its operations in the New York area with the intention of making investments throughout the United States and its territories and possessions as may from time to time be approved by SBA as its

*The holders of ten percent (10%) or more stock of Noro Ventures, N.V. are: John Arthur Van Vlissingen and Mjichael Schmidt-Ruthenbeck.

operating territory. Applicant plans to participate in various types of financing for small businesses and may include straight equity, straight debt, convertible debt, convertible preferred shares and debt with warrants or shares attached. Applicant will also enter into a management advisory contract with Research and Science Investors, Inc. (RASI), 230 Park Avenue, New York, New York 10017. RASI also serves as advisor to three other licensed SBIC's—Van Rietschoten Capital Corporation, Bohlen Capital Corporation and European Development Capital Corporation.

Matters involved in SBA's consideration of the application include the general business reputation of the owner and management, and the probability of successful operations of the new company, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than fifteen (15) days from the date of publication of this Notice in the Federal Register, submit to SBA, in writing, relevant comments on the proposed licensing of this company. Any such communications should be addressed to: Acting Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Peter F. McNeish,

Acting Associate Administrator for Investment.

Dated: September 1, 1980.

[FR Doc. 80-27532 Filed 9-8-80; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 04/04-0146]

Application for a License To Operate as a Small Business Investment Company; Peachtree Capital Corp. (Formerly Warranty Capital Corp.)

Notice is hereby given of the filing of an application with the Small Business Administration (SBA), pursuant to Section 107.102 of the Regulations governing small business investment companies (13 C.F.R. Section 107.102(1980)], under the name of Peachtree Capital Corporation, 1611 Gas Light Tower, 235 Peachtree Street, Atlanta, Georgia 30303, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (Act), as amended (15 U.S.C. 661 et seq.)

The proposed officers, directors, and major stockholders are as follows:

David Howe, 3176 Greenfield Dr., Mariette, Georgia 30067, President, Treasurer, Director and 8.5 percent Stockholder.

Stephen E. Raville, 685 Starlight Lane, Atlanta, Georgia 30303, Secretary, Director and 8.3 percent Stockholder.

Prabhudas Ruparell, 408 Wilverside Way, S.E., Calgary, Canada, Vice President, Director and 50 percent Stockholder.

The Applicant will begin operations with a capitalization of $500,000 which will be a source of both equity and debt financing to qualified small business concerns in a wide range of industries for normal growth, expansion and working capital.

The Applicant does not intend to use the services of an investment adviser but will provide consulting services to its clients and other small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed management and owner, including adequate profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any person may not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in Atlanta, Georgia.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-27535 Filed 9-8-80; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 06/06-5235]

Application for a License To Operate as a Small Business Investment Company; Power Ventures, Inc.

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing Section 301(d) Licensees (13 C.F.R. Section 107.102 (1980)], under the name of Power Ventures, Inc., 829 Highway 270 North, Malvern, Arkansas 72104, for a License to operate as a Section 301(d) Licensee under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and shareholders of the Applicant are as follows:

Dorsey David Glover, Route 5, Box 493-A, Malvern, Arkansas 72104, President, Director.

William Harrison Glover, 1661 Circle Drive, Malvern, Arkansas 72104, Secretary, Director.

Paul Ligon Offutt, 1055 Kahiki Drive, Diamonhead, Hot Springs, Arkansas 71901, Director.

Stihl Southwest, Inc., P.O. Box 518, Malvern, Arkansas 72104, 100 Percent shareholder.

Mr. Dorsey Glover is the sole owner of all of the outstanding stock of Stihl Southwest, Inc.

There will be two classes of stock authorized: one thousand shares of common stock with a par value of $1.00 per share, and two hundred shares of Preferred Stock-Series A, with a par value of $10,000 per share. The preferred stock will be issued only for sale to SBA and will be non-voting stock. Initially 100 shares of the common stock will be issued with a resultant private capital of $500,000. Applicant proposes to conduct its operations principally in the State of Arkansas.

As a Section 301(d) Licensee the investment policy of the Applicant will be limited to making investments solely in small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantage.

Matters involved in SBA's consideration of the application include the general business reputation and character of shareholders and management, and the probability of successful operation of the new company in accordance with the Act and Regulations.

Notice is further given that any person may, not later than (fifteen days from the date of publication of this notice), submit to SBA; in writing, comments on the proposed licensing of this company. Any such communications should be addressed to: Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published by the Applicant in a newspaper of general circulation in Malvern, Arkansas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 29, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-27531 Filed 9-8-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 01/01-0305]

Issuance of License To Operate as a Small Business Investment Company; Chestnut Capital Corp.

On July 23, 1980, a notice was published in the Federal Register (45 FR 49204) stating that Chestnut Capital Corporation, 111 Devonshire Street, Boston, Massachusetts 02109 had filed an Application with the Small Business Administration, pursuant to § 107.102 of the regulations governing small business invesment companies (13 CFR 107.102 (1980)), for a license to operate as a small business investment company.

Interested parties were given until the close of business on August 7, 1980, to submit written comments on the Application to the SBA.

Notice is hereby given that no written comments were received, and having considered the Application and all other pertinent information, the SBA approved the issuance of License No. 01/01-0305 on August 20, 1980, to Chestnut Capital Corporation, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: August 29, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-27533 Filed 9-8-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1914]

Mississippi; Declaration of Disaster Loan Area

Tallahatchie County and adjacent counties within the State of Mississippi constitute a disaster area as a result of damage caused by rain and flooding which occurred on June 23-24, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on November 3, 1980, and for economic injury until the close of business on June 2, 1981, at:

Small Business Administration, District Office, New Federal Building, Suite 322, 100 W. Capitol Street, Jackson, Mississippi 39201,

or other locally accounced locations.

(Catalog of Federal domestic Assistance Program Nos. 59002 and 59008)

Dated: September 2, 1980.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 80-27536 Filed 9-8-80; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting

The Small Business Administration Region I Advisory Council, located in the geographical area of Montpelier, Vermont, will hold a public meeting at 9:30 a.m., Thursday, October 9, 1980, at the Country House Restaurant, 276 North Main St., Barre, Vermont, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call David C. Emery, District Director, U.S. Small Business Administration, Federal Building, 87 State St., P.O. Box 605, Montpelier, Vermont 05602. (802) 229-0538.

Dated: September 2, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-27527 Filed 9-8-80; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting

The Small Business Administration Region I Advisory Council, located in the geographical area of Augusta, Maine will hold a public meeting at 12:00 noon on Thursday, October 2, 1980, at Hazel Green's Restaurant, 349 Water Street, Augusta, Maine, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Tom McGillicuddy, District Director, U.S. Small Business Administration, 40 Western Avenue, Augusta, Maine, (207) 622-6171, Ext. 225.

Dated: September 2, 1980.

Micheal B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-27530 Filed 9-8-80; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council; Public Meeting

The Small Business Administration Region III Advisory Council, located in the geographical area of Richmond, Virginia, will hold a public meeting at 1:00 p.m., Wednesday, October 8, 1980 through noon on Thursday, October 9, 1980, at the Boar's Head Inn, Charlottesville, Virginia, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Raymond P. Kuttenkuler, District Director, U.S. Small Business Administration, P.O. Box 10126, Richmond, Virginia 23240, (804) 771-2741.

Dated: September 2, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-27528 Filed 9-8-80; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The Small Business Administration Region VI Advisory Council, located in the geographical area of Lubbock, Texas, will hold a public meeting beginning at 9:30 a.m., Thursday and Friday, October 23 and 24, 1980, at the Rodeway Inn, 6201 Gateway West, El Paso, Texas, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Russell R. Berry, District Director, U.S. Small Business Administration, 712 Federal Office Building and Courthouse, 1205 Texas Avenue, Lubbock, Texas 79401, (806) 762-7462.

Dated: September 2, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-27529 Filed 9-8-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1903]

Texas; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that Cameron, Jim Wells, Kleberg, Nueces, San Patricio and Willacy Counties, Texas constitute a disaster area because of the damage resulting from Hurricane Allen beginning on or about August 10, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on October 10, 1980, and for economic injury until close of business on May 11, 1981, at:

Small Business Administration, District Office, 222 E. Van Buren—Suite 500, Harlingen, Texas 78550
or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 15, 1980.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 80-27648 Filed 9-8-80; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council Meeting; Public Meeting

The Small Business Administration Region I Advisory Council, located in the geographical area of Boston, Massachusetts, will hold a public meeting from 10:00 a.m. to 4:00 p.m., Monday, September 29, 1980, in the Conference Room of the Greater Worcester Massachusetts Area Chamber of Commerce, Suite 350, Mechanics Tower, Worcester, Massachusetts, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Constance Roberts, U.S. Small Business Administration, 150 Causeway Street, 10th Floor, Boston, Massachusetts 02114—(617) 223-4074.

Dated: September 2, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-27649 Filed 9-8-80; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council Meeting; Public Meeting

The Small Business Administration Region I Advisory Council, located in the geographical area of Providence, Rhode Island, will hold a public meeting at 12:00 noon, on Friday, October 3, 1980, at the Governor Dyer Buffet House, Providence, Rhode Island, to discuss such matters as may be presented by members of the Small Business Administration, and others attending.

For further information, write or call Charles J. Fogarty, District Director, U.S. Small Business Administration, 40 Fountain Street, Providence, Rhode Island 02903—(401) 528-4580).

Dated: September 3, 1980.

Michael B. Kraft,

Director, Office of Advisory Councils.

[FR Doc. 80-27651 Filed 9-8-80; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council Meeting; Public Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Coral Gables, Florida, will hold a public meeting from 8:30 a.m. to 4:30 p.m., Thursday, October 9, 1980, in the Sarasota Room, Barclay Airport Inn, 5303 W. Kennedy Boulevard, Tampa, Florida, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Bernard Layne, District Director, U.S. Small Business Administration, 2222 Ponce de Leon Boulevard—5th floor, Coral Gables, Florida 33134—(305) 350-5533.

Dated: September 3, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-27650 Filed 9-8-80; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council Meeting; Public Meeting

The Small Business Administration Region VII Advisory Council, located in the geographical area of St. Louis, Missouri, will hold a public meeting from 10:00 a.m., Wednesday, October 8, 1980, in the Windsor Room at the Cheshire Inn & Lodge, 6306 Clayton Road, St. Louis, Missouri, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call John L. Carey, District Director, U.S. Small Business Administration, One Mercantile Center, Suite 2500, St. Louis, Missouri 63101—(314) 425-4191.

Dated: September 4, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-27652 Filed 9-8-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/316]

Shipping Coordinating Committee, Subcommitte on Safety of Life at Sea; Meeting

The Working Group on Radiocommunications of SOLAS will conduct an open meeting at 1:30 p.m. on September 18, 1980 in Room 8440 of the Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590.

The purpose of the meeting is to prepare position documents for the Twenty-second Session of the Subcommittee on Radiocommunications of the Intergovernmental Maritime Consultative Organization to be held in London September 29, 1980. In particular, the working group will discuss the following topics:

—survival craft radio equipment;
—operational requirements for future EPIRBs;
—operational standards for shipboard radio equipment;
—maritime distress system.

For further information contact LT R. F. Carlson, U.S. Coast Guard (G-OTM-3/TP32), Washington, D.C. 20593, telephone (202) 426-1345.

Dated: August 28, 1980.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

[FR Doc. 80-27712 Filed 9-8-80; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/317]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The US SOLAS Working Group on Safety of Fishing Vessels will conduct an open meeting at 10:00 a.m. on September 23, 1980, in room 1319 of the Coast Guard Headquarters, 2100 2nd St., S.W., Washington, D.C. 20593.

The purpose of the meeting will be a review of the agenda items and delegation papers received by that time in preparation for the 23rd Session of Subcommittee on Safety of Fishing Vessels of the Intergovernmental Maritime Consultative Organization. In particular the Working Group will discuss:

—Harmonization of Fishing Vessel Code and Convention;
—New European attempt to outlaw ammonia as refrigerant.

For further information contact Mr. William A. Cleary, Jr., U.S. Coast Guard (G-MMT-5/TP12), 2100 2nd St., S.W., Washington, D.C. 20593, telephone (202) 426-2188.

Dated: August 28, 1980.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

[FR Doc. 80-27654 Filed 9-8-80; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/318]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The National Committee for the Prevention of Marine Pollution (NC) of the Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on Wednesday, November 5, 1980 in room 3201 of the U.S. Coast Guard Headquarters Building, 2100 Second Street S.W., Washington, D.C. 20593.

The purpose of this meeting is to finalize preparations for the 14th Session of the Marine Environment Protection Committee (MEPC) of the Intergovernmental Maritime Cnsultative Organization (IMCO) which is scheduled for November 10–14, 1980 in London. In particular, the NC will discuss the development of U.S. positions dealing with, inter alia, the following topics:

—Uniform interpretation and possible amendments of 1973 MARPOL Convention as modified by the 1978 Protocol
—Revised CBT Specifications and Manual
—Oil-water separators and monitoring equipment.

For further information contact Captain R. A. Biller, U.S. Coast Guard Headquarters (G-CPI), 2100 2nd Street, S.W., Washington, D.C. Telephone (202) 426–2280.

Dated: August 28, 1980.

John Todd Steward,

Chairman, Shipping Coordinating Committee.

[FR Doc. 80-27714 Filed 9-8-80; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/319]

Study Group 1 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 1 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on October 8, 1980, at 9:30 a.m. in the Preston Room, Baltimore Hilton Hotel, 101 West Fayette street, Baltimore, Maryland.

Study Group 1 deals with matters relating to efficient use of the radio frequency spectrum, and in particular, with problems of frequency sharing, taking into account the attainable characteristics of radio equipment and systems; principles for classifying emissions; and the measurement of emission characteristics and spectrum occupancy. The purpose of the meeting will be to review the outcome of the international meeting in June 1980; begin planning for the final meeting in October 1981; and plan for input into International Working Party 1/3 on review of activities of Study Group 1.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Gordon Huffuctt, State Department, Washington, D.C. 20520; telephone (202) 632–2592.

Dated: September 2, 1980.

Gordon L. Huffcutt,

Chairman, U.S. CCIR National Committee.

[FR Doc. 80-27686 Filed 9/8/80; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/320]

Study Group 6 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 6 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on October 9, 1980, at 9:00 a.m. in Room 3012 of the Department of Commerce Boulder Laboratories Building, 325 Broadway, Boulder, Colorado.

Study Group 6 deals with matters relating to the propagation of radio waves by and through the ionosphere. The purpose of the meeting will be to review the work undertaken at the Interim Meeting of Study Group 6 held in June/July 1980 and to initiate the activities for the Final Meeting scheduled for the Fall 1981.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available.

Requests for further information should be directed to Mr. Gordon Huffcutt, State Department, Washington, D.C. 20520, telephone (202) 632–2592.

Dated: September 2, 1980.

Gordon L. Huffcutt,

Chairman, U.S. CCIR National Committee.

[FR Doc. 80-27685 Filed 9-8-80; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 724]

Implementation of Executive Order 12114, Environmental Effects Abroad of Major Federal Actions; Revision of Procedures

AGENCY: Department of State.

ACTION: Revision of procedures for implementation of Executive Order 12114.

EFFECTIVE DATE: September 9, 1980.

FOR FURTHER INFORMATION CONTACT: Ms. Irene F. Dybalski, Office of Environment and Health, Room 7820, U.S. Department of State, Washington, D.C. 20520 (Tel: 202/632–9267).

The Department of State has revised its procedures implementing Executive Order 12114, Jan. 4, 1979, on Environmental effects abroad of major federal actions (44 FR 1957–1962, Jan. 9, 1979). Those procedures were originally issued as Department of State Foreign Affairs Manual Circular (FAMC) 807A, Sept. 4, 1979, and published at 44 FR 67004–67008, Nov. 21, 1979.

The principal effect of the revisions is to clarify, for purposes of these procedures, the definitions of the geographical areas within which various types of environmental review documents are to be prepared. No expansion or modification of U.S. territorial jurisdiction is implied. Subpart A, section 5 has been modified to read as follows:

"5. *Definitions*

"For the purpose of these procedures, the term:

"a. 'Responsible action officer' means the department officer principally responsible for the preparation of action memoranda and other documents relating to a given Departmental action governed by these procedures. Ordinarily, the responsible action officer will be the country or office director whose office has action responsibility for a given action.

"b. 'United States' means the States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, American Samoa, the U.S. Virgin Islands, Guam and the other territories and possessions of the United States, including the territorial seas thereof. For the purpose of these procedures, actions having significant environmental effects on the resources of the U.S. continental shelf or resources of the U.S. Fishery Conservation Zone subject to the jurisdiction of the United States shall be considered to be actions having significant environmental effects in the United States.

"c. 'Foreign nation' means any territory under the jurisdiction of one or

more foreign governments, including the territorial sea thereof. For the purpose of these procedures, actions having significant environmental effects on the resources of a nation's continental shelf or, to the extent its claim of jurisdiction is recognized by the United States, its fisheries zone shall be considered to be actions having significant environmental effects in that foreign nation.

"d. 'Global commons or areas outside the jurisdiction of any nation' means all areas not described in subsections b. or c. above.

"e. 'Environment' means the natural and physical environment and excludes social, economic and other environments; an action 'significantly affects' the environment if it does significant harm to the environment even though on balance the agency believes the action to be beneficial to the environment."

Consequential changes have been made to bring the wording in other sections of the procedures into accordance with these definitions.

Thomas R. Pickering,

Assistant Secretary, Bureau of Oceans and International Environmental and Scientific Affairs.

September 2, 1980.

[FR Doc. 80-27540 Filed 9-8-80; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF THE TREASURY

Performance Review Board

ACTION: Notice of Members of Performance Review Board (PRB).

SUMMARY: This notice announces the appointment of members of the composite PRB for the Bureaus of Engraving and Printing, Mint, Government Financial Operations, and Public Debt.

FOR FURTHER INFORMATION CONTACT: W. M. Gregg, Deputy Commissioner, Bureau of the Public Debt, Room 300 WA, 1435 G Street, N.W., Washington, D.C. 20226; Telephone 202-376-0265.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4) and the Civil Service Reform Act of 1978, the members of the Senior Executive Service Performance Review Board for the Bureaus of Engraving and Printing, Mint, Government Financial Operations, and Public Debt are listed below. This Board reviews the performance of Senior Executives below the level of bureau head and principal deputy in the four bureaus, except for the Assistant Commissioner (Comptroller) at the Bureau of Government Financial Operations. At least three voting members constitute a quorum. The notice of Fiscal Service PRB members published in the Federal Register on February 7, 1980, Volume 45, Number 27, page 8420, is hereby superseded.

E&P

Primary: Robert J. Leuver, Assistant Director (Administration)
Alternate: Milton J. Seidel, Assistant Director (Research and Engineering)

Mint

Primary: Alan J. Goldman, Deputy Director
Alternate: Galen D. Dawson, Assistant Director for Production

GFO

Primary: Michael D. Serlin, Assistant Commissioner (Disbursement and Claims)
Primary: John Turner, Assistant Commissioner (Governmentwide Accounting)

PD

Primary: W. M. Gregg, Deputy Commissioner
Alternate: Kenneth W. Rath, Assistant Commissioner (Washington)

This notice does not meet the Department's criteria for significant regulations.

Bette B. Anderson,

Under Secretary.

[FR Doc. 80-27542 Filed 9-8-80; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Veterans Administration Wage Committee; Notice of Meetings

Under the provisions of section 10 of Public Law 92-463, notice is hereby given that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, October 2, 1980
Thursday, October 16, 1980
Thursday, October 30, 1980
Thursday, November 13, 1980
Tuesday, November 25, 1980
Thursday, December 11, 1980
Monday, December 22, 1980

The meetings will convene at 2:30 p.m. and will be held in Room 1175A, Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC 20420.

The Committee's primary responsibility is to consider and make recommendations to the Chief Medical Director, Department of Medicine and Surgery, on all matters involved in the development and authorization of wage rate schedules for Federal Wage System (blue-collar) employees.

At these scheduled meetings, the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, the Federal Advisory Committee Act, as amended by Public Law 94-409, meetings may be closed to the public when they are concerned with matters listed under section 552b, Title 5, United States Code. Two of the matters so listed are those related solely to the internal personnel rules and practices of an agency (5 U.S.C. 552b(c)(2)), and those involving trade secrets and commercial or financial information obtained from a person and privileged or confidential (5 U.S.C. 552b(c)(4)).

Accordingly, I hereby determine that all portions of the meetings cited above will be closed to the public because the matters considered are related to the internal rules and practices of the Veterans Administration (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who wish to do so are invited to submit material in writing to the Chairman regarding matters believed to be deserving of the Committee's attention.

Additional information concerning these meetings may be obtained by contacting the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: August 28, 1980.

Max Cleland,

Administrator.

[FR Doc. 80-27616 Filed 9-8-80; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 176
Tuesday, September 9, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

CONTENTS

1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., Friday, September 12, 1980.

PLACE: 2033 K STREET NW., WASHINGTON, D.C., EIGHTH FLOOR CONFERENCE ROOM.

STATUS: closed.

MATTERS TO BE CONSIDERED: Judicial session.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S-1663-80 Filed 9-5-80; 11:28 a.m.]

BILLING CODE 6351-01-M

2

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, September 10, 1980.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Closed Commission Meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

General—1—Proposed Commission Regulations for a Performance Appraisal System (Non-SES and Non-Bargaining Unit Employees).

Common Carrier—1—Applications for authority to provide service to Cuba filed by Communications Satellite Corporation (File Nos. I-P-C-6916-29, I-P-C6916-31, I-P-C-7388-32, and I-P-C-7378-35); RCA Global Communications, Inc. (File Nos. I-T-C-2869, I-T-C-2904, I-T—I-T-C-2905 and I-T-C-3029) Western Union International, Inc. (File No I-T-C-2941); and TRT Telecommunications Corporation (File No. I-T-C-2613).

Hearing—1—Remand of the proceeding involving an application for a new standard broadcast station at Lares, Puerto Rico (Docket No. 20969).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: September 4, 1980.

[S-1660-80 Filed 9-5-80; 9:00 am]

BILLING CODE 6712-01-M

3

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Tuesday, September 9, 1980.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Special Open Commission Meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item Number, and Subject

Broadcast—1—Report and Order in Docket No. 20418, In the Matter of Petition for Rule Making to amend Television Table of Assignments to add new VHF stations in the top 100 markets and to assure that the new stations maximize diversity of ownership, control and programming. Commission will consider proposals to add VHF-TV television allotments in Knoxville, Tennessee; Salt Lake City, Utah; Charleston, West Virginia; and Johnstown, Pennsylvania.

Broadcast—2—Inquiry into the Future Role of Low Power Television and Television Translators in the National Telecommunications System, BC Docket No. 78–253.

Broadcast—3—Notice of Proposed Rule Making re: Table of Television Channel Allotments. The Commission considers initiating a rule making to amend the Rules for the addition of new VHF television allotments to the Table of Allotments to allow stations at less than minimum mileage separations, provided the new stations reduce antenna height and power to provide equivalent protection to existing stations.

Broadcast—4—*Title:* Request for authority to accept 15 applications for low power broadcast stations. *Summary:* The Commission considers whether to authorize the acceptance and further processing of applications for low power broadcast stations before the adoption of final rules.

Broadcast—5—*Title:* Applications by Hubbard Broadcasting, Inc. for permission to construct new UHF television translator stations at the following Minnesota communities: Aitkin (BPTT-790122IE), Alexandria (BPTT-790307IK), Brainerd (BPTT-780906IC), Donnelly & Herman (BPTT-790314IA), Little Falls (BPTT-3619), Long Prairie (BPTT-3621), Marshall (BPTT-781215IE), St. James (BPTT-790306IA), Wadena (BPTT-790215IX), Willmar (BPTT-781016IB), Worthington (BPTT-781227IG). *Summary:* The applicant seeks these translators to rebroadcast the signal of its Stations KSTP-TV, St. Paul, Minnesota to the respective communities which lie beyond KSTP-TV's Grade B contour. Petitions to deny filed by three television licensees raise questions concerning economic injury, need for these translators, adverse impact upon the development of local television stations and applicant's relationship with the ABC network.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: September 3, 1980.

[S-1662-80 Filed 9-5-80; 9:00 am]

BILLING CODE 6712-01-M

4

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, September 10, 1980.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission Meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item Number, and Subject

General—1—*Title:* Revision of Rules Concerning the Filing of Pleadings and Comments During and Immediately After Open Sunshine Meetings. *Summary:* Section 0.602 of the rules is supplemented to make clear that attendance at open Commission meetings does not include the right to file untimely and unauthorized pleadings and comments based on discussions occurring at such meetings.

General—2—*Title:* Renewal of the Radio Technical Commission for Marine Services (RTCM). *Summary:* The RTCM has worked since 1947 in marine telecommunications, providing appropriate recommendations to the Government and to Industry. The FCC sponsors the RTCM as a Federal Advisory Committee and the current charter expires on 30 September 1980.

General—3—*Title:* Petition for the Adoption of Procedures To Limit the Time in Which the Commission Must Respond to a Petition for Rulemaking (RM-3539). *Summary:* The rulemaking petition, submitted by the National Citizens Committee for Broadcasting, asks the Commission to establish a 180-day deadline for action on all rulemaking petitions.

General—4—*Title:* Add New Section 1.103 to the Commission's Rules, Which Will (1) Establish the Effective Date of Commission Actions and (2) Establish a Date by Which Commission Actions Are Final for Purposes of Seeking Reconsideration or Judicial Review. Amend Section 1.4(b) of the rules. *Summary:* The Commission must decide whether to adopt a new rule which establishes that the effective date of any Commission action will be the date of public notice of such action, unless affirmatively designated otherwise. The new rule will also provide that all Commission decisions become final, for purposes of initiating further relief, on the date of public notice of such decisions. Also, the Commission will consider whether to amend Section 1.4(b) of the rules and establish that the date of public notice will commence at 3 p.m. eastern time on the day after the occurrence of certain events.

General—5—*Title:* Petition for Rulemaking To Establish Standards for Determining the Standing of a Party to Petition To Deny a Broadcast Application (RM-2847). *Summary:* The rulemaking petition, submitted by the National Association of Broadcasters, asks the Commission to promulgate a rule requiring parties filing petitions to deny on behalf of one or more groups to provide descriptive information to facilitate a determination of whether the petitioner qualifies as a party in interest under Section 309(d) of the Communications Act.

General—6—*Title:* Amendment of Parts 2, 22, and 90 of the Commission's Rules to Allocate Spectrum in the 928-941 MHz Band and to Establish Other Rules, Policies, and Procedures for One-Way paging Stations in the Domestic Public Land Mobile Radio Service and the Private Land Mobile Radio Services. *Summary:* The Commission will consider whether to adopt a *Supplementary Notice of Proposed Rule Making* which discusses an alterantive allocation method to that proposed in the original *Notice of Proposed Rule Making* adopted April 24, 1980. This alternative method places more emphasis on market forces, rather than administrative decisions.

Private Radio—1—*Title:* Spanish Language Amateur Radio Operator Examinations. *Summary:* The FCC will consider rulemaking petitions RM-2529 and RM-2757, which propose that the FCC produce written amateur radio operator examinations in the Spanish language.

Private Radio—2—*Title:* Rulemaking petition (RM-3505) to amend Part 90 of the Commission's Rules governing operation in the Special Industrial Radio Service, and other Rules not limited to the Special Industrial Radio Service concerning licenses and application filings. *Summary:* The FCC will consider a Rulemaking Petition (RM-3505) requesting editorial amendments to the rules (1) clarifying general policies regarding discontinuance of station operation, temporary location operation and the scope of grants of temporary authority, and (2) clarifying Rules in the Special Industrial Radio Service concerning interservice frequency coordination, and other minor matters.

Private Radio—3—*Title:* Order terminating Docket 20908. *Summary:* This order terminates the Notice of Proposed Rule Making in Docket 20908 which has been superseded by General Docket 80-87.

Private Radio—4—*Title:* Petition for Limited Reconsideration in Docket 79-192. *Summary:* The Commission will consider whether to grant a Petition for Limited Reconsideration in Docket 79-192. The petition seeks recommendation of action that denied a proposal to require formal frequency coordination for assignment of four 450 MHz band medical paging frequencies in the Special Emergency Radio Service (Part 90).

Private Radio—5—*Title:* Report and Order which amends Part 81 of the Commission's Rules to specify the circumstances under which class III-B public coast stations may be exempted from the watch requirement. *Summary:* The FCC will consider whether to amend Part 81 at § 81.191(c)(3) to specify the circumstances under which class III-B public coast stations may be exempted from the channel 16 watch requirements.

Common Carrier—1—*Title:* Applications of Airsignal International, Inc., and its subsidiaries, for construction permits in the Domestic Public Land Mobile Radio Service. *Summary:* This item would resolve questions arising out of the Xerox-WUI merger concerning the application of the common carrier cut-off rule to applications of a WUI subsidiary, Airsignal International, Inc., that were pending at the time the merger took place. At the time the merger was consummated, Airsignal had on file applcations for new stations and for major and minor modifications of its existing stations. Airsignal filed amendments to these applications to reflect the change in ownership. The Commission must now decide which of these amendments should be classified as "major" and which as "minor." The Commission must then determine whether "major amendment" status should cause the applications amended to be treated as newly filed for purposes of the cut-off rule.

Common Carrier—2—*Title:* Elimination of Financial Qualifications in the Public Mobile Radio Services. *Summary:* Commission will consider whether to eliminate financial qualifications requirement in the Public Mobile Radio Services.

Common Carrier—3—*Title:* The Lincoln County Telephone System Inc. v. The Mountain States Telephone and Telegraph Company. (File No. TS 3-79). *Summary:* Lincoln County, a Nevada telephone company seeks to prevent Mountain Bell, a Bell System company, from removing an open wire line that serves as one of Lincoln County's two links to the national telephone network. The Commission will decide whether the removal of the open wire facility will result in unreasonable service or inadequate facilities to Lincoln County and its service area.

Common Carrier—4—In the Matter of Commercial Communications, Inc. *et al.* Considers Petition of Commercial Communications, Inc. *et al.* for a declaratory ruling alleging inconsistency between federal "interconnection" decisions and an Oklahoma Corporation Commission rule regulating the use and supply of customer-provided equipment.

Common Carrier—5—*Title:* Memorandum of Understanding concerning Interconnection in the Domestic Public Land Mobile Radio Service. *Summary:* Commission will consider whether to accept the Memorandum of Understanding concerning interconnection between wireline telephone carriers and radio common carriers and the implementation of the Single Number Access Plan (SNAP).

Common Carrier—6—*Cable Information Services, Inc., et al.* v. *Appalachian Power Company,* PA-79-0008. Joint complaint of four CATV operators that electric company's payments received for pole attachments are in excess of the maximum just and reasonable rate permitted and company engages in unfair practice of denying additional attachments under Communications Act Section 224. The Commission must decide: (1) whether the complaint should be granted; (2) what remedies, if any, are appropriate. Remedies the Commission may consider include: (a) terminate payments currently received; (b) substitute a just and reasonable rate for payments being received; (c) refund with interest excess payments made by the CATV operators; (d) grant or deny request requiring further attachments.

Common Carrier—7—*Title:* Petition for Reconsideration of the Commission's decision in *International Relay, Inc.,* FCC 80-222, released May 5, 1980, filed by ITT World Communications Inc. *Summary:* The Commission will consider whether the public interest would be served by: (1) imposing a time limitation upon the 214 authorization granted to International Relay, Inc. (IRI); and (2) conditioning IRI's authorization upon IRI adopting the uniform settlement rates for service between the United States and the United Kingdom.

Common Carrier—8—*Title:* Applications of WUI, RCAGC, ITT and TRT to lease DIGISAT circuits from Comsat for the provision of digital data leased channel and other services between the U.S. and various European countries. *Summary:* The Commission is considering (1) whether a special showing is required for the lease and multiplexing of a high-speed DIGISAT channel; (2) whether a separate rate should be required for DIGISAT-derived channels; (3) whether the use of DIGISAT-derived channels should be limited to digital data leased channel service and (4) whether the absence of an operating agreement prevents authorizing the carriers to lease and operate DIGISAT channels.

Common Carrier—9—*Title:* Applications for review of *MCI Telecommunications Corp.*, FCC Mimeo No. 25862 (released February 7, 1980), and *MCI Telecommunications Corp.*, FCC No. 31252 (released May 15, 1980). *Summary:* The Commission will consider applications for review of two orders of the Common Carrier Bureau allowing MCI Transmittal No. 118 (limiting the number of access codes available to Execunet customers) and MCI Transmittal No. 129 (eliminating the volume discount on the Execunet and Quickline options of Metered Use Service) to become effective.

Common Carrier—10—*Title:* Application for review of *AT&T*, Mimeo No. 11063 (released January 4, 1979). *Summary:* The Commission will consider an application for review filed by Satellite Business Systems of a Bureau order allowing AT&T Transmittal No. 13085, which eliminated a minimum switching terminals requirement for EPSCS customers, to become effective.

Common Carrier—11—*Title:* Amendment of Parts 1 and 61 of the Commission Rules with respect to petitions for rejection and petitions for suspension of tariff filings. *Summary:* The Rule changes proposed in this item would establish the same procedural requirements for tariff suspension and rejection petitions. As a separate matter, the Rules would be changed to reduce the number of working papers required by a carrier submitting a filing which involves a tariff change or a service not previously offered.

Common Carrier—12—*Title:* Petition of the New York State Commission on Cable Television (CCT) for reconsideration of the Commission's declaratory ruling, preempting certain policies and rulings enunciated by CCT to the extent that they interfered with the provision of Multipoint Distribution Service (MDS). *Summary:* On September 19, 1978, the Commission issued a declaratory order, *Orth-O-Vision, Inc.*, 69 FCC 2d 657, wherein it found that certain policy statements of CCT, if put into effect, would hinder the development of MDS. Therefore, the Commission preempted the policies and rulings contained in CCT's statements to the extent that they would prohibit the receipt of MDS transmission. CCT is petitioning the Commission to reconsider its decision, citing numerous alleged errors of fact and law as grounds for its request.

Cable Television—1—"Petition for Stay" filed July 10, 1980, by the Smaller Market UHF Television Stations Group. The Smaller Market UHF Television Stations Group, an informal association of UHF television broadcast station licensees operating in markets other than the first 50, requests that the Commission stay Section 76.92(g) of the Commission's Rules pending Commission disposition of a forthcoming rulemaking petition from the Group. The Group's petition is opposed by Winchester TV Cable Company, Vermont Television Corporation, United Antenna Service of Boone, Inc., the National Cable Television Association, and two groups of cable television system operators.

Renewal—1—*Title:* Mutually exclusive applications filed by: United Broadcasting Company, Inc. for renewal of license for station WOOK(FM), Washington, D.C.; District Broadcasting Company for a construction permit on WOOK's frequency; and Hispanic Broadcasting Company for a construction permit on WOOK's frequency; and petitions to deny United's renewal application filed by Hispanic Broadcasting Company and by the Metropolitan Washington Coalition for Latino Radio. *Summary:* Petitioners contend that United is not qualified as an applicant for the station by virtue of the misconduct which has resulted in the loss of some of its other broadcast licenses. They also allege that the procedures utilized by United in its format switch are further evidence of its disqualifying lack of character, and that the format switch, which ultimately resulted in the elimination of the market's only Spanish-language station, should not have been permitted by the Commission. Various issues are raised as to the acceptability of the other applications, and whether the Commission should consider at this stage of the proceedings Hispanic's claim for a preference based on its Spanish-language programming proposal, and what that resolution should be.

Aural—1—*Subject:* (a) Request by Braverman Broadcasting Company, Inc., licensee of AM Station KCJJ, Iowa City, Iowa, to operate at a minimal power level during certain nighttime hours. (b) Requests for interim authorizations by limited-time stations assigned to Class I-A Clear Channels. *Summary:* The Commission will consider the KCJJ request as well as similar requests by limited-time stations in accordance with paragraph 84 of the *Report and Order* in Docket 20642, released June 20, 1980.

Aural—2—Memorandum Opinion and Order in re application of Northwestern College for a change in the facilities of station KNWC, Sioux Falls, South Dakota, and petitions to deny filed by Midwest Radio Corporation (KWYR) and WXYZ, Inc. (WXYZ). *Summary:* The FCC considers the above application and petitions alleging that the proposed operation will cause interference to KWYR, Winner, South Dakota, and WXYZ, Detroit, Michigan.

Aural—3—*Title:* "Application for Review of Action taken by Delegated Authority" filed May 19, 1980 by San Antonio Community Radio Corporation, Inc. *Summary:* This pleading is directed against the staff action of May 6, 1980 which denied its request for assignment of the call letters KAZZ to a new noncommercial educational FM station in San Antonio, Texas.

Aural—4—*Subject:* Reguest for Declaratory Ruling filed by Patton Communications Corporation. *Summary:* This request concerns the pouring of concrete footings for a proposed broadcast tower and whether such activity constitutes premature construction within the ambit of Section 319(a) of the Communications Act.

Television—1—*Title:* Mutually exclusive applications for a CP for new TV station on channel 11, Houma, LA. *Summary:* Six mutually exclusive applications to be designated for comparative hearing. Questions raised by informal objections and petitions to deny to be resolved. Questions include short-spacing and need for "satellite" form of operation.

Television—2—*Title:* Application of Front Range Educational Media for CP for new TV station in Broomfield, CO. *Summary:* Commission granted unopposed application and denied a Denver ETV station's post-grant petition for reconsideration. The Commission considers the applicant's financial ability to operate for 3 months on remand from Court of Appeals for D.C. Circuit, which vacated Commission's original grant.

Broadcast—1—Report and Order in Docket 80-10, In the Matter of Operation of Visual and Aural Transmitters of TV Stations. The Commission will consider proposed rule amendments (Section 73.653) to permit separate operation of the aural and visual transmitters of TV stations during "graveyard" hours—a period defined as between 12 Midnight and 6 A.M.

Broadcast—2—*Title:* Requests for the formation of a new Government-Industry Advisory Committee, and for the inauguration of an omnibus proceeding to facilitate a comprehensive approach to AM and FM matters now being considered in separate dockets, and for the inauguration of rulemaking to discontinue the threshold requirements of Section 73.37(e)(2) of the rules. *Summary:* The Commission will consider staff recommendations for action upon the foregoing requests.

Broadcast—3—*Title:* Notice of Proposed Rulemaking in Docket No. 21473; Amendment of the Rules governing the Conversion of Radiation Patterns for AM broadcast stations. *Summary:* The commission considers whether to issue a Notice of Proposed Rulemaking looking towards conversion of all U.S. AM directional stations to standard patterns.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: September 4, 1980.

[S-1579-80 Filed 9-5-80; 8:59 am]
BILLING CODE 6712-01-M

5

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Monday, September 15, 1980 and Tuesday, September 16, 1980.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Special Commission Meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item Number, and Subject

Broadcast—1—*Title:* Panel discussions In the Matter of Radio Deregulation (BC Docket No. 79-219). *Subject:* The Special meetings

will be held so that panel discussions can take place to permit the exchange of views with the Commission regarding the issues in this proceeding. No official action will be taken by the Commission at these meetings.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: September 4, 1980.

[S–1661–80 Filed 9–5–80; 9:00 am]

BILLING CODE 6712–01–M

6

[NM–80–33]

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9 a.m., Tuesday, September 16, 1980.

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Railroad Accident Report*—Head-on Collision of Baltimore & Ohio Freight Trains Extra 6474 East and Extra 4367 West, Orleans Road, West Virginia, and *Recommendations* to the Federal Railroad Administration and to the Baltimore & Ohio/Chesapeake & Ohio Railroad Companies.
2. *Special Study*—Air Taxi Safety in Alaska and *Recommendations* to the Federal Aviation Administration, to the State of Alaska, to the National Weather Service, and to the Alaska Air Carriers Association.
3. *Safety Effectiveness Evaluation* of Selected State Highway Skid Resistance Programs and *Recommendations* to the Federal Highway Administration.
4. *Marine Accident Report*—SS FRONTENAC Grounding in Lake Superior at Silver Bay, Minnesota, November 22, 1979, and *Recommendations* to the U.S. Coast Guard and to the National Oceanic and Atmospheric Administration.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming 202–472–6022.

September 5, 1980.

[S–1664–80 Filed 9–5–80; 11:37 am]

BILLING CODE 4910–58–M

7

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Thursday, September 11, 1980.

PLACE: Commissioners Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED:

10 a.m.

Discussion of Management-Organization & Internal Personnel Matters (Approx 2 hrs) (CLOSED–Exemption 2 & 6)

3:30 p.m.

1. Affirmation Session (approximately 10 minutes, public meeting): (a) Licensing Requirements for Spent Fuel Storage (tentative); (b) Order in Seabrook (tentative); (c) Part-Time Members of ASLB (tentative).
2. Time Reserved for Discussion and Vote on Affirmation Items (if required).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498.

Those planning to attend a meeting should reverify the status of the day of the meeting.

Roger M. Tweed,

Office of the Secretary.

[S–1665–80 Filed 9–5–80; 3:03 pm]

BILLING CODE 7590–01–M

8

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: 45 FR 58297, September 2, 1980; to be published.

STATUS: Closed meetings: Open meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATES PREVIOUSLY ANNOUNCED: August 26, 1980 and September 2, 1980.

CHANGES IN THE MEETINGS: Cancellation/additional items.

The following item was not considered at the closed meeting scheduled for Wednesday, September 3, 1980, at 2:30 p.m.:

Legislative and regulatory matters bearing enforcement implications.

The following additional items were considered at the closed meeting scheduled for Thursday, September 4, 1980, at 9:00 a.m.:

Formal Order of Investigation.

Litigation matter.

The following additional item will be considered at the open meeting scheduled for Wednesday, September 10, 1980, at 10:00 a.m.:

Consideration of an application by Alabama Power Company, an electric utility subsidiary of The Southern Company, a registered holding company, pursuant to the Public Utility Holding Company Act of 1935 to issue and sell at competitive bidding up to $300 million principal amount of first mortgage bonds in one or more series and up to $100 million of preferred stock in one or more series not later than February 28, 1981. A request for hearing has been received in connection with the proposal. For further information, please contact William C. Weeden at (202) 523–5677.

Chairman Williams and Commissioners Loomis, Evans, and Friedman determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Lowenstein at (202) 272–2092.

September 4, 1980.

[S–1658–80 Filed 9–5–80; 8:59 am]

BILLING CODE 8010–01–M

Federal Register

Tuesday
September 9, 1980

Part II

Department of the Interior

Fish and Wildlife Service

Fish and Wildlife Service Mitigation Policy; Notice of Draft Policy

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Fish and Wildlife Service Mitigation Policy; Notice of Draft Policy

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of Draft Policy—Request for Comment.

SUMMARY: This Notice invites public comment on draft policy guidance for Fish and Wildlife Service (FWS) personnel involved in providing recommendations to protect or conserve fish and wildlife resources that may be impacted by Federal or Federally permitted or licensed land and water resource developments. The policy is needed to: 1) ensure consistent and effective FWS recommendations; 2) allow Federal and private developers to anticipate FWS recommendations and plan for mitigation needs early, and 3) reduce FWS and developer conflicts as well as project delays. The intended effect of the policy is to protect and conserve the most important and valuable fish and wildlife resources while facilitating balanced development of the Nation's natural resources.

DATES: Written comments are due on or before October 9, 1980.

ADDRESS: Comments should be addressed to: Associate Director—Environment, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 Attention: John Christian.

FOR FURTHER INFORMATION CONTACT: John Christian, Program Development Staff—Environment, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, (202) 343-7151.

SUPPLEMENTARY INFORMATION:

Background

The development and use of the Nation's natural resources continues in an effort to provide people with their basic needs and to improve their lives. Fish and wildlife and the intricate fabric of natural resources upon which they depend provide benefits to people in many ways. Fishing, hunting, and bird watching are basic benefits that come to mind immediately. These activities involve the direct use of these renewable "natural resources." Perhaps a greater benefit, although more difficult for some to understand, is the maintenance of the structure and function of the ecosystem that comprises all living species, including people. The presence of diverse, healthy fish and wildlife populations generally signals a healthy ecosystem which contains those elements necessary for human survival, including unpolluted air and water and productive land.

That fabric of natural resources called habitat is the supply for fish and wildlife renewal. The life requirements for plant and animal species are varied and complex. Every species requires a different set of environmental conditions for survival and vigorous growth. These conditions form the habitat of the various species. The development and use of natural resources leads to changes in environmental conditions that can redefine habitat and thus change the mix and abundance of plant and animal species.

The FWS has provided Federal leadership for over 40 years to protect and conserve fish and wildlife and their habitat. The FWS under its legal authorities related to habitat preservation conducts fish and wildlife impact analysis and provides mitigation recommendations for Federal projects and private projects that require a Federal license or permit or will utilize Federal funds. Fish and Wildlife Service policies on mitigation have been developed over the years. The most important of these include:

1. A general policy statement entitled "Position Paper of the Fish and Wildlife Service Relative to Losses to Fish and Wildlife Habitat Caused by Federally Planned or Constructed Water Resource Developments." It was approved and released on December 18, 1974.

2. Guidelines entitled: "Review of Fish and Wildlife Aspects of Proposals in or Affecting Navigable Waters" and "Oil and Gas Exploration and Development Activities in Territorial and Inland Navigable Waters and Wetlands." They were published in the Federal Register on December 1, 1975 (FR 55804-55824).

These policies outline mitigation positions and recommendations for FWS personnel involved in the review of water resource development projects. The 1974 policy provides an overall mitigation policy for the FWS, but it is very general in nature and does not provide decisionmaking guidance. The 1975 guidelines are very specific with regard to specific mitigation methods for various activities but they do not outline an overall mitigation policy.

Recent events have indicated a need for an updated overall mitigation policy for the FWS that contains specific guidance on mitigation goals. The President's Water Policy Statement and Directives of 1978 indicated a greater need to define appropriate mitigation.

The Executive Orders on the Protection of Wetlands (E. O. 11990) and Floodplain Management (E. O. 11988) require mitigation of project impacts, to the extent practicable. Finally, the current national need to accelerate development of energy resources requires that early planning decisions be made that can minimize conflict between important environmental values and energy resource development. For those reasons, it was determined to be necessary to fully outline the overall mitigation policy of the Fish and Wildlife Service.

The draft FWS mitigation policy outlines and describes the current basis for mitigation decisionmaking in the Fish and Wildlife Service. An analysis was made of 365 examples of FWS field level mitigation recommendations. The principles currently being applied at the field level were then consolidated into the overall statement of policy that is the subject of this notice.

This policy conditions the actions of FWS employees involved in providing mitigation recommendations, with the exception of those recommendations relating to threatened or endangered species. Those requirements are covered by the Endangered Species Act of 1973 and 40 CFR Part 402. The policy does not dictate actions or positions that development agencies or individuals must accept. However, it is hoped that the policy will provide a common basis for mitigation decisionmaking and facilitate earlier consideration of important fish and wildlife values in project planning activities. This policy does not extend the authorities of the Department of the Interior or the Fish and Wildlife Service beyond those that currently exist.

Finally, it should be stressed that this FWS policy outlines mitigation needs for fish and wildlife, their habitat and uses thereof. Others interested in mitigation of project impacts on other aspects of the environment such as human health or heritage conservation may find the FWS policy does not fully cover their needs. There was no intent to develop an FWS mitigation policy that covers all possible project impacts except those stated. The FWS believes that preservation and conservation of important natural resources is a necessary prerequisite to human existence.

Discussion

1. Relationship of Mitigation policy to Other FWS Planning Activities.

The draft policy is designed to stand on its own. However, for a clearer perspective of the relationship of the policy to the goals and objectives of the Fish and Wildlife Service, it should be read with the Service Management Plan and the Habitat Preservation Program Management Document which includes

a discussion of Important Resource Problems that the FWS believes require priority attention.

The Service Management Plan describes the overall direction of the Fish and Wildlife Service and the interrelationships of the four major categories of the Service including Habitat Preservation, Wildlife Resources, Fishery Resources, and Federal Aid-Endangered Species.

The Habitat Preservation Program Management Document (PMD) outlines what the FWS will do over a one to five year period to ensure the protection and proper management of fish and wildlife habitat. It provides guidance to Service personnel and other interested parties on the goals, objectives, policies, and strategies of the Habitat Preservation Category of the Fish and Wildlife Service.

The Habitat Preservation PMD identified 78 problems that concern nationally important fish and wildlife resources. The Fish and Wildlife Service has ranked them to aid in program planning. Each Important Resource Problem indicates that a certain species or community of species in a specified geographic area is or will be under significant stress. Those Important Resource Problems ranked higher on the list imvolve relatively higher value, in the broad sense of the term, or more threatened species or habitat.

Most Important Resource Problems involve habitat: physical destruction, chemical contamination, or reduction in water quantity or quality. The programs of the Habitat Preservation Category deal with these problems to the extent possible. Important Resource Problems provide a focus for financially and personnel-constrained Category activities. Given limited funds and personnel, specific Habitat Preservation Category activities will be directed to the Service's Important Resource Problems.

2. Relationship of the Mitigation Policy to the Fish and Wildlife Coordination Act (FWCA) Regulations.

The Fish and Wildlife Service published proposed regulations on May 19, 1979, for implementing the Fish and Wildlife Coordination Act (16 U.S.C. 661–667(e)) (FWCA). A subsequent decision was made to prepare an Environmental Impact Statement on the proposed action. The FWCA regulations have been significantly revised and will be reproposed in the near future. Those regulations will interpret the FWCA and establish procedures and guidelines for Federal agencies in implementing the FWCA. In contrast to the FWCA regulations, the proposed mitigation policy does not suggest any requirements for any other Federal agency nor does it predetermine or preempt issues which may also be covered in those rules. It explains existing policy for determining the substance of specific Fish and Wildlife Service mitigation recommendations under numerous authorities, including the FWCA.

Whereas the FWCA rules, if and when reproposed, would in part provide internal FWS guidance on subjects similar to those addressed in this draft policy, this policy addresses basically different concepts: levels of and priorities for mitigation; techniques for impact analysis; and selection among mitigation tools. The policy would operate internally, not in the context of what action agencies must or should do once they receive recommendations from the FWS which are made under this policy or other guidance. For these reasons, it was decided that this policy could and should be set forth for the information of the public separately from the FWCA rulemaking.

3. Focus of Policy on Habitat Value.

The policy covers impacts to fish and wildlife populations, their habitat and the human uses thereof. However, the primary focus in terms of specific guidance is on the mitigation of habitat value losses.

Population estimates are considered by many to be unreliable indicators for evaluating fish and wildlife impacts. Sampling errors, cyclic fluctuations of populations and the lack of time series data all contribute to the problem. Therefore, the FWS feels that habitat value, by measuring carrying capacity, is a much better basis for determining mitigation requirements. However, the use of population information is not foreclosed by the policy. In fact, concern for population losses led to formulation of the "General Principles" section to seek "* * * (mitigation for) all losses of fish, wildlife, their habitat and uses thereof * * *." The FWS agrees that mitigation of population losses is a necessary aspect of this policy, for example, when habitat value is not affected but migration routes are blocked off as in the case of dam construction on a salmon river.

Mitigation of human use losses of fish and wildlife resources is also a necessary aspect of the policy. However, if habitat mitigation occurs, then in the majority of cases, human use losses are also minimized. However in some cases, public access to the resource may be cut off by the project or significant recreational or commercial benefits may be lost.

In those cases where habitat value mitigation of fish and wildlife population or human use losses is not deemed adequate, the FWS will seek to mitigate such losses in accordance with the general principles and concepts presented in the policy. However, in the majority of cases, the Service feels the preferred way to assure a continuous supply of fish and wildlife populations and human use opportunities is to mitigate impacts on habitat values.

The Fish and Wildlife Service has recently revised and updated its *Habitat Evaluation Procedures* (HEP). These procedures define habitat value through the use of Habitat Units. A Habitat Unit, which measures both habitat quality and quantity, is expressed as a function of the suitability of a particular study habitat for a given important species (habitat quality) multiplied by the number of acres of that habitat (habitat quantity). It can be used, where appropriate, to determine mitigation needs based on habitat value losses. In some cases, the project may not be deemed appropriate for applying the methodology as in the case of activities conducted on the high seas under the Outer Continental Shelf (OCS) leasing program. Other limitations are outlined in the policy. The HEP are available upon request from the Chief, Division of Ecological Services, Fish and Wildlife Service, Washington, D.C. 20240.

4. Rationale for Mitigation Goals.

In developing this policy, it was agreed that the fundamental principles guiding mitigation are: 1) that avoidance or full compensation be recommended for the most valued resources; and 2) that the degree of mitigation requested correspond to the importance and scarcity of habitat at risk. Five resource categories of decreasing importance were identified, with mitigation goals of decreasing stringency developed for the four significant categories. Table 1 summarizes all categories and their respective goals.

Table 1.—*Resource Categories and Mitigation Goals*

Resource category	Designation criteria	Mitigation goal
1	High value for important species and unique or irreplaceable.	No loss of habitat.
2	High value for important species and scarce or becoming scarce.	No net loss of in-kind habitat value.
3	High value for important species and abundant.	No net loss of total habitat value.
4	Low value for important species.	Minimize loss of habitat value.
5	No value for important species.	None.

For categories 1, 2, and 3, mitigation goals are fixed standards recommending, at a minimum, total

habitat preservation or total habitat value replacement. These standards represent minimum planning goals for FWS recommendations and are based on the premise that these high importance categories of fish and wildlife resources constitute a "merit good" to society and should be preserved so that their benefits may be enjoyed by all.

Therefore, to adequately protect the public interest, Service mitigation recommendations in the most highly valued resource categories (1, 2, and 3) are based on predetermined levels of habitat value that will reserve their special values to humans. The mitigation goals do demonstrate some flexibility since limited habitat tradeoffs are permitted. In-kind habitat replacement is allowed in Resource Category 2 and out-of-kind habitat replacement in Resource Category 3 provided these substitutions are of equal habitat value.

Precedents for standards dictating a minimum acceptable quality necessary to protect the public interest are prevalent throughout government and industry; for example:

- Environmental Protection Agency: air and water quality standards.
- Food and Drug Administration: food and drug quality standards.
- Industry: tolerance limits for machinery; quality control standards.

These standards serve as valuable and dependable guidance to Federal and private developers, enabling them to develop implementation and compliance strategies in the earliest stages of the project planning process.

In contrast to the first three categories, the mitigation goal for category 4 is presented as a general directive, i.e., "minimize loss of habitat value." A continual loss of habitat value in this category is inevitable, but is acceptable since the habitat is of low value for the support of important species. Significant loss of any habitat type currently in this category may be prevented through timely reclassification by FWS personnel as it becomes scarcer and more important.

A mitigation goal was not set for category 5 habitat. These areas of impact are judged to be of relatively low ecological value such that development on these lands or waters does not compromise important species.

Finally, it should be understood that these mitigation goals are to act as floors in recommending project design parameters, and are in no way intended as ceilings. Planners, while deciding on project plans will be urged by FWS personnel to find means of blending habitat enhancement opportunities for all resource categories into project design. All enhancement efforts in plans containing adequate mitigation features will have the full support of the Fish and Wildlife Service.

National Environmental Policy Act Requirements

The FWS has prepared an environmental assessment of this policy. Based on an analysis of the environmental assessment, the Director of the Fish and Wildlife Service has concluded that the proposed action is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) requiring an Environmental Impact Statement (EIS) for the following reasons:

1. The proposed action is not a major Federal action as defined in the regulations for implementing NEPA, prepared by the Council on Environmental Quality (40 CFR 1508.18(b)(1)).

The proposed policy is basically a summary and a compilation of approaches and policy currently being practiced by FWS field personnel involved in providing mitigation recommendations. Since the Service has been providing such recommendations under its legal authorities for many years, the proposed policy document will not result in any new FWS programs nor will it substantially alter the operation or impacts of any existing programs.

2. The proposed action will not significantly affect the quality of the human environment as defined in 40 CFR 1508.27 of the NEPA regulations because:

a. The FWS recommendations based on this proposed policy have no impacts on the natural environment amenable to analysis under NEPA. Any impacts on Federal or private development actions are unpredictable because: 1) information is not available on where development will occur or what will be developed, 2) the effect of the proposed policy depends upon the willingness of developers to accept and implement recommendations and 3) no method exists to predict future site-specific FWS mitigation recommendations in advance of the development of project plans.

b. The proposed policy does not impose requirements on Federal or private developers to accept or implement FWS mitigation recommendations.

c. The proposed policy substantially reflects current FWS positions; it will have little effect on the human environment beyond that which currently exists.

It is also appropriate to note that preparations of an EIS at this time would be premature. Any action which is the subject of a recommendation by the FWS pursuant to this policy and which has significant effects on the human environment would be the subject of an EIS when it is proposed by an action agency (See, Andrus v. Sierra Club, 442 U.S. 347,363 (1979)).

The Environmental Assessment and Finding of No Significant Impact will be furnished upon request.

Public Comment Invited

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the policy development process. Interested persons are invited so submit written comments regarding the proposed policy or the environmental assessment. These comments and any additional information received will be considered by the Director before recommending a final policy to the Secretary for approval. Correspondence should be mailed to the address given at the beginning of this proposal.

The primary author of this proposed policy is John Christian, Leader, Policy Group, Program Development Staff—Environment, U.S. Fish and Wildlife Service, (202) 343–7151.

Fish and Wildlife Service Proposed Mitigation Policy

I. Purpose

This document establishes policy for Fish and Wildlife Service recommendations on mitigating the impacts of land and water developments on fish, wildlife, their habitats, and use thereof. It will help to assure consistent and effective recommendations by outlining policy for the levels of mitigation to be achieved and the various methods for accomplishing mitigation. It will allow government agencies and private developers to anticipate Fish and Wildlife Service recommendations and plan for mitigation measures early, thus avoiding delays and assuring equal consideration of fish and wildlife resources with other project features and purposes.

This policy supercedes the December 18, 1974, policy statement entitled "Position Paper of the Fish and Wildlife Service Relative to Losses to Fish and Wildlife Habitat Caused by Federally Planned or Constructed Water Resource Developments."

II. Authority

This policy is established in acordance with the following major authorities: (See Appendix A for other authorities.)

Fish and Wildlife Act of 1956 (16 U.S.C. 742(a)–754). This Act authorizes the development and distribution of fish and wildlife information to the public, Congress, and the President and the development of policies and procedures that are necessary and desirable to carry out the laws relating to fish and wildlife including: 1) " * * * take such steps as may be required for the development, advancement, management, conservation, and protection of the fisheries resources;" and 2) "* * * take such steps as may be required for the development, managment, advancement, conservation, and protection of wildlife resorces through research * * * and other means."

Fish and Wildlife Coordination Act (16 U.S.C. 661–667(e)). This Act authorizes the Fish and Wildlife Service to investigate all proposed Federal undertakings and non-Federal actions proposed under Federal permit or license which would impound, divert, deepen, or otherwise control or modify a stream or other body of water and to make mitigation and enhancement recommendations to the involved Federal agency. "Recommendations * * * shall be as specific as practicable with respect to features recommended for wildlife conservation and development, lands to be utilized or acquired for such purposes, the results expected, and shall describe the damage to wildlife attributable to the project and the measures proposed for mitigating or compensating for these damages." In addition, the Act requires that wildlife conservation shall receive equal consideration and be coordinated with other features of water resource development programs.

National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347). This Act and its implementing regulations (40 CFR 1500–1508) require that the Fish and Wildlife Service be notified of all Federal actions potentially affecting fish and wildlife resources and requires the Service to review, comment, and make recommendations. In addition, the Act provides that "the Congress authorizes and directs that, to the fullest extent possible * * * all agencies of the Federal Government shall * * * identify and develop methods and procedures * * * which will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations." The regulations specifically require all agencies to "Use all practicable means * * * to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment."

III. Scope

This policy will apply to all activities of the Fish and Wildlife Service related to the evaluation of impacts of land and water developments and to the development of recommemdations to mitigate those impacts except for those relating to threatened or endangered species. This includes, but is not limited to, reviews and recommendations for federally issued permits and licenses, Federal projects, coal and Outer Continental Shelf lease sales, Federal approval of State programs, and areawide plans. The requirements for threatened and endangered species are covered in the Endangered Species Act of 1973 and accompanying regulations at 40 CFR Part 402.

This policy does not apply to Fish and Wildlife Service recommendations related to the enhancement of fish and wildlife resources. Enhancement occurs when overall habitat value is improved beyond that which would occur without the project and beyond that necessary to fully compensate for project-related losses. Whenever practicable, the Fish and Wildlife Service strongly supports enhancement of fish and wildlife resources.

IV. Definition of Mitigation

The President's Council on Environmental Quality defined the term mitigation in the National Environmental Policy Act regulations as a planning process. That process includes "(a) avoiding the impact altogether by not taking a certain action or parts of an action; (b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, and (e) compensating for the impact by replacing or providing substitute resources or environments." (40 CFR 1508.20(a–e))

The Fish and Wildlife Service supports and adopts this definition of mitigation.

V. Mitigation Policy of the Fish and Wildlife Service

The overall goals and objectives of the Fish and Wildlife Service are outlined in the Service Management Plan and an accompanying Important Resource Problems document which describes specific fish and wildlife problems of importance for planning purposes. Goals and objectives for Service activities related to land and water development are contained in the Habitat Preservation Program Management Document. These documents should be consulted to provide the proper perspective for the Service mitigation policy. They are available upon request from the Director, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

A. *General Principles.*

It is the policy of the Fish and Wildlife Service to seek to mitigate all losses of fish, wildlife, their habitat, and uses thereof from land and water developments.

Fish and wildlife are public resources. They are protected and managed for the people by State, Federal, and Indian tribal governments. Any loss of fish and wildlife habitat results in a direct and indirect loss of fish and wildlife populations. When land or water developments threaten those resources, State and Federal fish and wildlife agencies and Indian tribal agencies have a responsibility to take actions necessary to recommend mitigation of potential losses.

The preferred method of protecting the public trust is to use an approach toward development planning which makes concern for fish and wildlife resources an integral part of project design. The Fish and Wildlife Service will actively support projects that provide equal consideration for fish and wildlife resources along with other project features.

The Service will require as a condition for support that projects be designed to avoid or minimize losses including 1) adoption of features that will cause no significant disruption of the structure and function of the larger ecosystem of which the project will be a part, 2) selection of the least environmentally damaging practicable alternative, and 3) assuring that the proposed activity is water-dependent if it is a work, structure, or activity that will be within or affect waters of the United States. In addition, if project design cannot rectify all losses or reduce or eliminate them over time, then the Service will require that the public be compensated for such loss consistent with the appropriate mitigation goal for

that fish and wildlife resource as a further condition for support.

Mitigation of all project impacts can best be assured by close, early coordination and cooperation between fish and wildlife agencies and private developers or government agencies that develop or regulate development of natural resources.

B. *Fish and Wildlife Service Mitigation Goals by Resource Category.* The goals that follow shall be used to guide Fish and Wildlife service recommendations on mitigation of project impacts. Five Resource Categories are used to indicate that the level of mitigation recommended must be consistent with the fish and wildlife resource values involved. (See Appendixes B, C, and D and the Fish and Wildlife Service *Habitat Evaluation Procedures,* 1980, for an explanation and illustration of concepts used in this section. These procedures are available upon request from the division of Ecological Service, Fish and Wildlife Service, Washington, DC 20240.)

Resource Category 1

a. *Designation Criteria.*

Habitat to be impacted is of high value for important species and is unique or irreplaceable in the ecoregions of concern.

b. *Mitigation Goal.*

No Loss of Habitat

Guideline: Losses of those habitat features which justify the designation of unique or irreplaceable habitat must be prevented.

Resource Category 2

a. *Designation Criteria.*

Habitat to be impacted is of high value for important species and is relatively scarce or becoming scarce in the ecoregions of concern. The Fish and Wildlife Service identified Important Resource Problems generally fit into this Category.

b. *Mitigation Goal.*

No net loss of in-kind habitat value.

Guideline: Losses must be avoided or minimized. When losses occur they should be rectified by repairing, rehabilitating, or restoring the affected environment or reduced or eliminated over time by preservation and maintenance operations during the life of the action.

If losses cannot be avoided or minimized and rectified, or reduced or eliminated over time, then losses must be fully compensated by replacement of the *same kind of habitat* so that the total loss of in-kind habitat value equals zero.

This can be accomplished by the physical modification of replacement habitat to convert it to the same type lost or restoration and rehabilitation of previously altered habitat. By replacing habitat losses with similar habitat, populations of important species associated with that habitat will remain relatively stable in the area over time. This is generally referred to as in-kind replacement.

Exceptions: An exception can be made to this goal when 1) different habitats and important species available for compensation are determined by the Fish and Wildlife Service to be of greater value than those lost *or* 2) in-kind replacement is not physically or biologically attainable in the ecoregions of concern. In either case, replacement involving *different habitat kinds* may be acceptable provided that the *total value* of the habitat lost is replaced (see the guideline for Category 3 mitigation below).

Resource Category 3

a. *Designation Criteria.*

Habitat to be impacted is of high value for important species and is relatively abundant in the ecoregions of concern.

b. *Mitigation Goal.*

No net loss of total habitat value.

Guideline: Losses must be avoided or minimized. When losses occur, they should be rectified by repairing rehabilitating, or restoring the affected environment, or reduced or eliminated over time by preservation and maintenance operations during the life of the action.

If losses cannot be avoided or minimized and rectified, or reduced or eliminated over time, then losses must be fully compensated by replacement of habitat value so that the total loss of habitat value equals zero. *It is not necessary to replace habitat losses with the same kind of habitat.* This goal can be achieved by substituting different kinds of habitats (out-of-kind replacement) and/or by increasing management of replacement habitats so that the value of the lost habitat is replaced.

By replacing habitat value losses with different habitats or increasing management of habitats, populations of important species will change depending on the ecological attributes of the replacement habitat. This will result in no net loss of total habitat value, but may result in significant differences in fish and wildlife populations.

Resource Category 4

a. *Designation Criteria.*

Habitat to be impacted is of low value for important species in the ecoregions of concern.

b. *Mitigation Goal.*

Minimize loss of habitat value.

Guideline: Losses must be avoided or minimized. When losses occur they should be rectified by repairing, rehabilitating, or restoring the affected environment, or reduced or eliminated over time by preservation and maintenance operations during the life of the action.

If losses cannot be avoided or minimized and rectified, or reduced or eliminated over time, then in-kind or out-of-kind replacement will not be required.

Resource Category 5

a. *Designation Criteria.*

Habitat to be impacted is of no value for important species in the ecoregions of concern.

b. *Mitigation Goal.*

None.

Guideline: No mitigation is required.

c. *Mitigation Planning Procedures.*

1. *Mitigation Goals.*

The Fish and Wildlife Service, in cooperation with State fish and wildlife agencies, will make Resource Category determinations and develop specific mitigation goals for projects as part of the mitigation plan. Such determinations should be made early in the planning process, to the extent possible, and transmitted to the lead agency or private developer.

2. *Impact Assessment Methods.*

a. The net biological impact of a development proposal (or alternatives) is the difference in predicted habitat value between the future with the action and the future without the action. If the future without the action cannot be reasonably predicted and documented by the project sponsor, then the FWS analysis should be based on biological conditions that would be expected to exist over the planning period due to natural species succession in the absence of human interference or which currently exist at the project site.

b. The Habitat Evaluation Procedures will be used by the Service as a basic tool for evaluating project impacts and as a basis for formulating subsequent recommendations for mitigation subject to the exemptions below:

—Time constraints preclude Habitat Evaluation Procedures application;

—Adequate funds (transferred or otherwise) are not available;

—The project is relatively insignificant; or

—The project is deemed not appropriate for applying the methodology.

When the Habitat Evaluation Procedures do not apply as determined above, then other habitat-based

evaluation systems may be used provided such use conforms with policies provided herein.

c. In those cases where instream flows are an important determinant of habitat value, strong consideration should be given to the use of the Fish and Wildlife Service's Instream Flow Incremental Methodology to develop instream flow mitigation recommendations.

d. Fish and Wildlife Service review of project impacts and development of appropriate mitigation recommendations will consider, whenever possible:

—The total long-term ecological impact of the project, including any secondary or indirect impacts regardless of location; and

—Any cumulative effects when viewed in the context of existing or planned projects.

3. *Mitigation Recommendations.*

a. Recommendations will be presented by the Service at the earliest possible stage of project planning to assure maximum consideration. The Fish and Wildlife Service will strive to provide a mitigation recommendation that represents the best judgment of the Service on the most cost-effective means of achieving the mitigation goal for the project area. Such recommendations will be developed in cooperation with the lead agency or private developer responsible for the project and will place heavy reliance on cost estimates provided by that agency or private developer. In addition, the Service will be receptive to alternative mitigation proposals by the lead agency or private developer that are considered more cost-effective and that will fully achieve the mitigation goal established by the Fish and Wildlife Service.

b. The Fish and Wildlife Service will recommend that the lead agency or private developer include designated funds for all environmental mitigation (including the initial development costs as well as continuing operation, maintenance, replacement, and administrative costs) as part of the initial and any alternative project plans and that mitigation funds be spent concurrently and proportionately with overall project construction and operation funds throughout the life of the project.

c. First priority will be given to recommendation of a mitigation site in proximity to the project site within the same ecoregion section. Second priority will be given to recommendation of a mitigation site elsewhere within the same ecoregion section. Third priority will be given to recommendation of a mitigation site located in a different ecoregion section within the same ecoregion province.

d. If losses cannot be avoided or minimized and rectified, or reduced or eliminated over time, then final achievement of the mitigation goal for compensation of losses through means and measures other than land acquisition in fee title will be given priority consideration where such means and measures:

—Would fully achieve the mitigation goal for the specific project area.

—Are cost-effective in comparison to fee title land acquisition taking into account the initial development costs as well as continuing operation, maintenance, replacement, and administrative costs.

—Are to be funded by the lead project agency (as authorized and appropriated by Congress) or private developer as an integral part of overall project cost. Such funding must include that required for the lead agency or for any other agency which assumes a participating role in the mitigation effort for initial development, operation, maintenance, replacement, or administrative costs.

—Would be the ultimate responsibility of the lead project agency to enforce and administer the continuous effective implementation of such means and measures, particularly where a lease or easement is involved, even in instances where the Fish and Wildlife Service, involved State fish and wildlife agency, or Indian tribal agency may agree to participate in management efforts.

—Would provide public benefits similar in scope and extent to those expected to be achieved via fee title land acquisition.

—Would provide for a duration of effectiveness for the life of the project plus such additional time required for the adverse effects of an abandoned project to cease to occur.

4. *Follow-Up.*

The Fish and Wildlife Service encourages, supports, and will participate whenever practicable, in post-project evaluation to determine the effectiveness of recommendations in achieving the mitigation goal.

D. *Project Opposition.*

Projects may be opposed by the Fish and Wildlife Service when the conditions for project support outlined under *General Principles* are not met.

Appendix A. Other Authorities for FWS Mitigation Recommendations

Legislative

Federal Water Pollution Control Act, as amended (33 U.S.C. 1251–et seq). The 1977 amendments require the Fish and Wildlife Service "* * * upon request of the Governor of a State, and without reimbursement, to provide technical assistance to such State in developing a Statewide (water quality planning) program and in implementing such program after its approval." In addition, this Act requires the Service to comment on proposed State permit programs for the control of discharges of dredged or fill material and to comment on all Federal permits within 90 days of receipt.

Watershed Protection and Flood Prevention Act (16 U.S.C. 1001–1009). This Act allows the Secretary of the Interior to make surveys, investigations, and "* * * prepare a report with recommendations concerning the conservation and development of wildlife resources * * *" on small watershed projects.

Estuary Protection Act (16 U.S.C. 1221–1226). This Act requires the Secretary of the Interior to review all project plans and reports for land and water resource development affecting estuaries and to make recommendations for conservation, protection, and enhancement. It also requires the Secretary to "* * * conduct directly or by contract a study and inventory of the Nation's estuaries * * *."

Coastal Zone Management Act of 1972 (16 U.S.C. 1451–1465). This Act requires the Secretary of Commerce to obtain the views of Federal agencies affected by the program, including the Department of the Interior, and to insure that these views have been given adequate consideration before approval of Coastal Zone Management Plans. The Service provides the Department's views about fish and wildlife resources.

Water Bank Act (16 U.S.C. 1301–1311). This Act requires that the Secretary of Agriculture "shall consult with the Secretary of Interior and take appropriate measures to insure that the program carried out * * * is in harmony with wetlands programs administered by the Secretary of the Interior."

Wild and Scenic Rivers Act (16 U.S.C. 1271–1287). This Act requires the Secretary of the Interior to comment on such proposals. The Fish and Wildlife Service provides the Department's views with regard to fish and wildlife resources.

Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025). This Act requires that the Fish and Wildlife Service recommend to the Secretary those lands that shall not be leased for geothermal development by reason of their status as "a fish hatchery administered by the Secretary, wildlife refuge, wildlife range, game range, wildlife management area, waterfowl production area, or for lands acquired or reserved for the protection

and conservation of fish and wildlife that are threatened with extinction."

Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.). This Act requires the Department of the Interior to regulate surface mining and reclamation at existing and future mining areas. The Fish and Wildlife Service provides the Department with technical assistance regarding fish and wildlife aspects of Department programs on active and abandoned mine lands, including review of State regulatory submissions and mining plans, and commenting on mining and reclamation plans.

Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1801). This Act requires the Secretary of the Interior to manage an environmentally sound oil and natural gas development program on the outer continental shelf. The Fish and Wildlife Service provides recommendations for the Department regarding potential ecological impact before leasing in specific areas and contributes to environmental studies undertaken subsequent to leasing.

Federal Power Act of 1920 (6 U.S.C. 791(a), 803,811). This Act authorizes the Secretary of the Interior " * * * to acquire or otherwise make available such adjacent lands or interests therein as are necessary for * * * fish and wildlife use * * *" for reserviors being built or otherwise under his control.

Mineral Leasing Act of 1920, as amended (30 U.S.C. 181–287). This Act authorizes the Secretary of the Interior to grant rights-of-way through Federal lands for pipelines transporting oil, natural gas, synthetic liquids or gaseous fuels, or any other refined liquid fuel. Prior to granting a right-of-way for a project which may have a significant impact on the environment, the Secretary is required by this Act to request and review the applicant's plan for construction, operation, and rehabilitation of the right-of-way. Also, the Secretary is authorized to issue guidelines and impose stipulations for such projects which shall include, but not be limited to, "* * * requirements for restoration, revegetation and curtailment of erosion of surface land; * * * requirements designed to control or prevent damage to the environment (including damage to fish and wildlife habitat); and * * * requirements to protect the interests of individuals living in the general area of the right-of-way or permit who rely on the fish, wildlife and biotic resources of the area for subsistence purposes."

Cooperative Unit Act (16 U.S.C. 753(a)–753(b)). This Act provides for cooperative programs for research and training between the Fish and Wildlife Service, the States, and universities.

Airport and Airways Development Act (49 U.S.C. 1912). This Act requires the Secretary of Transportation to "consult with the Secretary of the Interior with regard to the effect that any project * * * may have on natural resources including, but not limited to, fish and wildlife, natural, scenic, and recreation assets, water and air quality, and other factors affecting the environment * * *."

Department of Transportation Act (49 U.S.C. 1653(f)). This Act makes it national policy that "special effort should be made to preserve the natural beauty of the country-side and public park and recreation lands, wildlife and waterfowl refuges, and historic sites," and requires that the Secretary of Transportation "cooperate and consult with the Secretary of the Interior in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed." The Department of Transportation projects using protected lands cannot be approved unless there are no feasible and prudent alternatives to avoid such use and, if none, all possible measures to minimize harm have been considered.

Executive

President's Water Policy Message (June 6, 1978). This message directs the Secretary of the Interior to promulgate procedures for determination of measures to prevent or to mitigate losses of fish and wildlife resources.

Water Resources Council's *Proposed Rules; Principles, Standards and Procedures for Planning Water and Related Land Resources* (April 14, 1980). These rules reiterate the importance of participation in the development planning process by interested Federal agencies, including the Department of the Interior. This participation includes review, coordination, or consultation required under various legislative and executive authorities. Under these rules, "Alternative plans are to include appropriate mitigation measures as determined by the responsible Federal planning agency. Mitigation measures are to be implemented concurrently with and in proportion to the installation of other plan measures. Fish and wildlife habitat mitigation measures are to be planned in coordination with Federal and State fish and wildlife agencies as required by the rules implementing the Fish and Wildlife Coordination Act of 1958 (16 U.S.C. 661–664)."

Executive Order 11990—Protection of Wetlands (May 24, 1977). This Executive Order requires that each Federal agency "* * * take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing and disposing of Federal lands and facilities; and (2) providing federally undertaken, financed or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulation and licensing activities." Relevant wetland concerns and values include, but are not limited to, maintenance of natural systems and long-term productivity of existing flora and fauna, habitat diversity, hydrological utility, fish, wildlife, timber, and food. Under this Order, a developmental project in a wetland may proceed only if no practicable alternatives can be ascertained and if the proposal "* * * includes all practicable measures to minimize harm to the wetland that may result from its use."

Executive Order 11998—Floodplain Management (May 24, 1977). This Executive Order requires that Federal agencies take floodplain management into account when formulating or evaluating water or land use plans and that these concerns be reflected in the budgets, procedures, and regulations of the various agencies. This Order allows developmental activities to proceed in floodplain areas only when the relevant agencies have "considered alternatives to avoid adverse affects and incompatible development in the floodplains" or when, in lieu of this, they have "* * * designed or modified their actions in order to minimize potential harm to or within the floodplain * * *."

National/International Treaties

Federal Trust Responsibility to Indian Tribes. This responsibility is reflected in the numerous Federal treaties with the Indian tribes. These treaties have the force of law. Protection of Indian hunting and fishing rights necessitates conservation of fish and wildlife and their habitat.

Convention Between the United States and Japan (March 4, 1972). This Treaty endorses the establishment of sancturaries and fixes preservation and enhancement of migratory bird habitat as a major goal of the signatories.

Convention Between the United States and the Union of the Soviet Socialist Republic Concerning the Conservation of Migratory Birds and Their Environments (November 19, 1976). This Treaty endorses the

establishment of sanctuaries, refuges, and protected areas. It mandates reducing or eliminating damage to all migratory birds. Furthermore, it provides for designation of special areas for migratory bird breeding, wintering, feeding, and molting, and commits the signatories to "* * * undertake measures necessary to protect the ecosystems in these areas * * * against pollution, detrimental alteration and other environmental degradation."

Appendix B. Mitigation Means and Measures

Mitigation recommendations can include, but are not limited to, the following types of actions.

1. *Loss Avoidance and Minimization.*

a. Physical Modifications:

(1) Location at least damaging site.

(2) Reduction in size.

(3) Design of project to prevent disruption of biological community structure and function.

(4) Fish and wildlife passage structures.

(5) Fish and wildlife avoidance structures.

(6) Water pollution control structures.

(7) No project.

b. Management Practices:

(1) Timing and control of initial construction operations and subsequent operation and maintenance to eliminate disruption of biological community structure and function.

(2) Control of water pollution through best management practices.

(3) Timing and control of flow diversions and releases.

(4) Control over public access for recreational or commercial purposes.

(5) Hunting and fishing regulations.

(6) Selective tree clearing or other habitat manipulation.

(7) Including fish and wildlife protection as an authorized purpose of Federal projects.

(8) Control over domestic livestock use.

(9) Maintenance of public access.

(10) Wetland protection through full application of environmental laws such as Section 404 of the Clean Water Act (33 U.S.C. 1251 et seq.).

2. *Habitat Modification and Improvement.*

a. Physical Modifications:

(1) Habitat construction measures to restore or rehabilitate previously altered habitat or modify existing habitat suited to important species for the purpose of offsetting habitat value losses.

(2) Revegatating and restocking disrupted habitat.

(3) Fishery propagation facilities.

(4) Construction of public access facilities.

b. Management Practices:

(1) Wildlife management planning to increase habitat value of existing areas.

(2) Legislative set aside or protective designation.

(3) Land use zoning.

(4) Provision of buffer zones.

(5) Water rights acquisition.

c. Land Acquisition:

(1) Lease arrangements.

(2) Easement acquisition.

(3) Land acquisition in fee title.

Appendix C. Other Definitions

"Cost-effective" means the return of an acceptable level of average habitat value per dollar spent in mitigation. The mitigation policy defines acceptable levels of habitat value for resource categories based on their perceived importance. Among mitigation alternatives, the most cost-effective measure is that recommendation returning the greatest number of habitat units per dollar spent in mitigation, provided the mitigation goal has also been met.

"Ecoregions of concern" means those ecoregion divisions, provinces, and sections that contain fish, wildlife, their habitat or uses thereof that may be directly or indirectly impacted by a proposed project or development plan.

"Ecosystem" means all of the biotic elements (i.e., species, populations, and communities) and abiotic elements (i.e., land, air, water, energy) interacting in a given geographic area so that a flow of energy leads to a *clearly* defined trophic structure, biotic diversity, and material cycles. (Eugene P. Odum. 1971. *Fundamentals of Ecology)*

"Equal replacement," when applied to out-of-kind replacement, means one-for-one compensation of habitat value units when the replacement species mix is considered to be of equivalent value to society.

"Fish and wildlife resources" mean birds, fish, mammals, and all other classes of wild animals and all types of aquatic and land vegetation upon which wildlife is dependent.

"Habitat" means the area or ecosystem which provides direct support for a given species, population, or community. It includes all environmental features that comprise an area such as air quality, water quality, vegetation and soil characteristics and water supply (including both surface and groundwater).

"Habitat value" means the suitability of an area or ecosystem to support a given important species. For purposes of this mitigation policy, habitat value can be expressed for a given important species and study area as Habitat Units (HU) where:

$$HU = \text{Habitat Suitability Index (HSI)} \times \text{Acres}$$

where

$$HSI = \frac{\text{Study area habitat conditions}}{\text{Optimum habitat conditions}}$$

"Important" means a determination that the attributes of a fish and wildlife resource warrant FWS involvement.

"Important species" means those fish and wildlife resources in the geographic area of concern that represent high resource values to people or represent a critical indicator of ecosystem structure or function. The term is generally synonomous with "evaluation" and "target species" as used in the FWS *Habitat Evaluation Procedures*, 1980. As a guideline, the following should be considered when making selections of important species:

1. Species that are associated with Important Resources Problems as designated by the Director of the Fish and Wildlife Service.

2. Species with monetary and non-monetary benefits to people accruing from consumptive and noncomsumptive human uses including, but not limited to, fishing, hunting, birdwatching and educational, aesthetic, scientific, or subsistence uses.

3. Species that perform a key role in maintaining community structure and function. These species represent a critical pathway for energy flow and ecosystem stability.

4. Species that represent groups of species which use common environmental resources (guilds). Predicted impacts on that indicator species can be extended to other guild members.

5. Species known to be sensitive to specific water and land development actions. These species serve as an "early warning" indicator species for the affected community.

"Important Resource Problem" means a clearly defined problem with a single important population or a community of similar species in a given geographic area as defined by the Director of the Fish and Wildlife Service.

"In-kind replacement" means providing substitute resouces that are physically and biologically the same or closely approximate those lost. The term is described further in the Habitat Evaluation Procedures.

"Loss" means a change in habitat due to human activities that reduces the biological value of that habitat for important species. Changes that improve the value of existing habitat for important species are not considered

losses, i.e., burning or selective tree cutting for wildlife management purposes.

"Minimize" means to reduce to the smallest practicable amount or degree.

"Out-of-kind replacement" means providing substitute resources that replace the habitat value of the resources lost, but are physically or biologically different than those lost. The term requires "equal" or "relative" replacement as defined in this appendix.

"Practicable" means capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors, such as environment, cost, or technology. The test includes a heavy burden on the lead agency to both identify alternatives and conduct a searching inquiry into their practicability. This test, however, is not limited by the temporary unavailability of sufficient financial resources to implement mitigation measures. In addition, mitigation measures will not be rejected as "impracticable" solely on the basis of increased costs associated with an undertaking. However, "reasonableness" will be a key factor in practicability determinations.

"Problem" means the difference between the existing or potential resource status and the desired status.

"Project" means a work, structure, or activity that will directly or indirectly affect an ecosystem.

"Relative replacement" means proportionate compensation of habitat value units when the replacement species mix is considered to be of greater or lesser value to society.

Appendix D. Hypothetical Example Explaining Application of Mitigation Goals by Resource Category

The table below demonstrates application of FWS mitigation goals to a specific project area variously classified (for purposes of illustration) as belonging to Resource Categories 1, 2, 3, 4, and 5.

The first two columns depict the existing, or "without project," condition of the proposed project area. Column 1 lists current species composition. Column 2, using habitat value units, records the value of the habitat for the support of these important species.[1]

The remaining five columns show post-mitigation conditions in the project area that would be acceptable to the FWS. Depending upon the resource categorization of the project area, the mitigation goal can range from no loss of habitat (Resource Category 1) to no mitigation required (Resource Category 5).

[1] Habitat value units measure the relative suitability of an area or ecosystem for support of a given important species. Habitats particularly suitable for a species' nesting, foraging, reproductive, or other biological needs will, on a per acre basis, be assigned higher habitat values for that species' needs than areas less suitable.

EXISTING CONDITIONS IN PROPOSED PROJECT AREA		ACCEPTABLE POST-MITIGATION CONDITIONS IN PROJECT AREA UPON CLASSIFICATION AS:				
Species Composition* (Important Species)	Habitat Value to Important Species (Habitat Value Units)	Resource Category 1 Goal: No Loss of Habitat (Habitat Value Units)	Resource Category 2 Goal: No Net Loss of In-Kind Habitat Value (Habitat Value Units)	Resource Category 3 Goal: No Net Loss of Total Habitat Value (Habitat Value Units)	Resource Category 4 Goal: Minimize Loss of Habitat Value (Habitat Value Units)	Resource Category 5 Goal: None (Habitat Value Units
Species A	50	No Loss	50	10	30	None
Species B	30	No Loss	30	0	10	None
Species C	10	No Loss	10	0	5	None
Species D	10	No Loss	10	40	5	None
Species E	0	N/A***	N/A	50	N/A	None
	100 habitat value units	No Loss of original 100 habitat value units	100 in-kind habitat value units	100** total habitat value units	50 total habitat value units	None

* Important Species are designated A-E for illustration only.
** Assuming "equal replacement" as defined in Appendix C.
*** N/A = Not applicable

Dated: September 4, 1980.

Cecil Andrus,

Secretary of the Department of the Interior.

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Part III

Department of Housing and Urban Development

Office of Assistant Secretary for Community Planning and Development

Community Development Block Grants; Innovative Grants Program

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-80-849]

Community Development Block Grants; Innovative Grants Program

AGENCY: Department of Housing and Urban Development (HUD), Office of the Assistant Secretary for Community Planning and Development.

ACTION: Interim rule.

SUMMARY: This rule modifies requirements governing the Innovative Grants Program in order to (1) clarify program objectives, and (2) provide more explicit guidance to prospective applicants on the requirements for unsolicited proposals, solicited preapplications and full applications. The new requirements replace the current rule in its entirety.

EFFECTIVE DATE: October 1, 1980.

COMMENT DUE DATE: November 10, 1980.

ADDRESS: Send comments to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of HUD, 451 Seventh Street, S.W., Washington, D.C. 20410. Each person submitting a comment should include his/her name and address, refer to the document by the document number indicated in the headings, and give reasons for any recommendations. Copies of all written comments received will be available for examination by interested persons in the Office of the Rules Docket Clerk, at the address listed above. The proposal may change in the light of comments received.

FOR FURTHER INFORMATION CONTACT: William C. Jacobson, Office of Policy Planning, Department of HUD, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-6092. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The Innovative Grants Program was authorized under the Housing and Community Development Act of 1974 as one of six (now eight) programs under Section 107, the Secretary's Discretionary Fund.

The program provides opportunities for HUD to award grants to eligible applicants for demonstration projects that address serious community development problems and have promise of providing exemplary ways for states and units of general local government (e.g., counties and cities) to resolve such problems.

Since the inception of the program, six grant competitions have been conducted and a number of unsolicited proposals have been awarded. Based upon this experience, it is evident that the current regulations require modification to provide more complete and explicit guidance to prospective applicants on the requirements of the program. This includes a simplified definition of program objectives (i.e., project innovativeness) and specific information on the format, contents and other requirements of unsolicited proposals.

The new rules also permit community and other groups to submit unsolicited proposals to HUD for consideration, as long as the applicable States or units of general local government endorse the proposals and agree to submit full applications, if HUD review of the proposed project is favorable.

An interim rule is proposed in order to permit use of (1) the revised full application requirements by finalists in the current Community Energy Conservation competition, and (2) revised preapplication requirements by proposers participating in a new competition planned for Fall of 1980.

A handbook which details the HUD review and approval process is currently under preparation and will be available for distribution shortly after the effective date of the proposed interim rule.

A finding of inapplicability has been made with respect to the environmental review of the proposed interim rule pursuant to 24 CFR Part 50. A copy of this finding is available for inspection in the Office of Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, Washington, D.C. 20410.

We refer readers to the final rule published February 27, 1976 (41 FR 8612), as amended on August 31, 1976 (41 FR 36650), and further modified on September 12, 1977 (42 FR 45768) and March 1, 1978 (43 FR 8473).

This interim rule is not listed on the Department's semi-annual agenda of significant rules.

Accordingly, § 570.406 is amended as follows:

§ 570.406 Innovative grants program.

(a) *Program Objectives.* The Innovative Grants Program provides an opportunity for HUD to award grants to States and units of general local government for projects that test or demonstrate exemplary community development activities or techniques. The projects to be tested or demonstrated must meet the following criteria for innovativeness:

(1) Involve concepts, methods or devices that can be replicated by other eligible Community Development Block Grant entities without special federal funding;

(2) Provide an improved way of meeting a common community development need (i.e., advance the state of the community development art); and

(3) Meet one of the following additional criteria: (i) Be untried or unique; or

(ii) Have been implemented elsewhere, and the special conditions or circumstances surrounding the project warrant its consideration for funding.

(b) *Types of Proposals and Applications.* Funding requests may be unsolicited preliminary proposals or solicited preapplications.

(1) *Unsolicited Preliminary Proposals*—States, units of general local government and other public or private organizations may submit unsolicited preliminary proposals to obtain HUD reaction to project ideas they have originated.

(i) Proposals shall be used by HUD to make judgments of the eligibility of proposed project activities and their potential for funding. Proposers may be invited by HUD to submit full applications for proposals that HUD regards highly. There is no HUD commitment to fund any unsolicited preliminary proposal or full application, regardless of its merit.

(ii) Proposers not eligible for direct program funding pursuant to § 570.406(c) must submit with their proposals a letter signed by the chief executive officer of the appropriate State or unit of general local government. Said letter must endorse the proposal, certify that the proposed project is consistent with the relevant community development and housing assistance plans, and indicate agreement to submit a full application for the proposed project, if such an application is invited by HUD.

(iii) Preapplications that were submitted and not funded under an Innovative Grants Program competition pursuant to § 570.406(h) may not be re-submitted as unsolicited preliminary proposals.

(2) *Solicited Preapplications*—Preapplications are accepted only from States and units of general local government and only in response to grant competitions announced in Notices published in the Federal Register. The requirements for preapplications are stated in such Notices. Successful preapplicants shall be invited by HUD to submit full applications. There is no HUD commitment to fund any preapplication or full application, regardless of its merits.

(c) *Eligible Applicants.* Only States and units of general local government (as defined in 24 CFR 570.3(u) and 570.3(v)) are eligible to submit preapplications or full applications for, or receive Innovative Grants; except that:

(1) In addition to States and units of general local government, any interested community group or other public and private organizations may submit unsolicited preliminary proposals for HUD review pursuant to § 570.406(g), even though such organizations are ineligible for direct program funding. HUD shall not accept from such ineligible organizations full applications invited by HUD under the unsolicited preliminary proposal process.

(2) In addition to those submitted by eligible applicants on behalf of themselves, proposals or preapplications may be submitted jointly or on behalf of other eligible jurisdictions. These requests shall:

(i) Contain copies of agreements with each jurisdiction listed in the proposal or preapplication that specify concurrence with the purpose and intent of the proposal or preapplication and intent to comply with grant requirements, if funded by HUD:

(ii) Address problems faced by all jurisdictions listed in the proposal or preapplication, as such requests shall be considered only if mutual action is essential;

(iii) Be submitted by one of the jurisdictions listed for all others, and that jurisdiction shall be responsible for overall coordination and administration of the project.

(d) *Eligible Activities.* Project activities that may be funded under this Section are those eligible under 24 CFR Part 570—Community Development Block Grants, Subpart C—Eligible Activities. As specified in 24 CFR 570.200(i), no more than twenty (20) percent of the funds awarded under this Section may be used for overall program administration or planning activities eligible under 24 CFR 570.205 and 570.206.

(e) *Submission Times and Places.* (1) Unsolicited preliminary proposals may be submitted any time during the year. They shall be sent to:

Department of Housing and Urban Development, Office of Community Planning and Development, 451 Seventh Street, S.W., Washington, D.C. 20410, Attention: Director, Secretary's Fund Division, CPM.

(2) Solicited preapplications shall be submitted by the time and to the place stated in the Federal Register Notice for a competition.

(f) *A-95 Clearances.* Applicants for assistance under this Section shall comply with Attachment A, Part I of Office of Management and Budget (OMB) Circular No. A-95 and 24 CFR Part 52, except as modified below.

(1) *Proposals and Preapplications*— The requirements of OMB Circular No. A-95 shall not apply to unsolicited preliminary proposals or preapplications.

(2) *Full Applications.* (i) HUD shall notify State and and areawide A-95 clearinghouses of applicants invited to submit full applications at the same time HUD notifies said applicants. This shall be at least 60 days prior to the deadline indicated by HUD for submission of full applications. To permit early clearinghouse review, each applicant invited to submit a full application shall send a copy of its preliminary proposal to the appropriate State and areawide clearinghouses immediately following receipt of the invitation from HUD. This preliminary proposal shall serve as the Notification of Intent under the A-95 Project Notification and Review System.

(ii) Unless otherwise advised by a clearinghouse, the applicant shall submit the full application to the appropriate State and areawide A-95 clearinghouses at least forty-five (45) days prior to the deadline for submission to HUD. Clearinghouses shall have thirty (30) days from the date of receipt to review the application and send any comments to the applicant. The applicant shall have fifteen (15) days, including mailing time, to respond to clearinghouse comments, if any. The applicant shall submit to HUD by the prescribed deadline three (3) copies of the following documents: any clearinghouse comments; the applicant's response to such comments; and the full application. HUD shall not take final action on the application until either:

(A) All clearinghouse comments and applicant responses have been considered; or

(B) The thirty (30) day clearinghouse review and comment period, plus mailing time, has elapsed without comment and the application has been submitted to HUD.

(3) *Grant Amendments.* For major amendments, as defined by HUD, grantees shall submit a completed Standard Form 424 to the appropriate State and areawide A-95 clearinghouses. In the description section of the form, the grantee shall clearly and concisely summarize the purpose and impact of the proposed amendment. Clearinghouses shall determine, immediately upon receipt of the completed Form 424, whether to request from the grantee and review copies of the complete proposed amendment. If review of the complete amendment is requested, clearinghouses shall have thirty (30) days from the date of receipt, plus mailing time, to review the proposed amendment and send any comments to the grantee. The grantee shall have fifteen (15) days following the clearinghouse review and comment period, including mailing time, to submit to HUD three (3) copies of the following documents: any clearinghouse comments; the applicant's response to such comments; and the proposed amendment. If clearinghouses did not request copies of the proposed amendment or comments have not been received by the end of the 30-day review and comment period, plus mailing time, the grantee shall submit three (3) copies of the proposed amendment to HUD for review and approval.

(g) *Unsolicited Preliminary Proposal Requirements.* Proposals shall comply with the format, contents, length and other requirements of this paragraph. Three (3) copies of a proposal must be sent to the address stated in § 570.406(e)(1). In addition, proposers that are ineligible for direct program funding pursuant to § 570.406(c) shall submit a letter from the appropriate State or unit of general local government as required under § 570.406(b)(1)(ii). All other proposers must submit with their proposals a brief letter of transmittal containing the signature of the chief executive officer of the applicable State, or unit of general local government. Proposals that do not comply with all requirements of this paragraph shall not be reviewed by HUD.

(1) To be accepted for review by HUD, proposals shall be typed using letter-size paper, standard type face and one-inch margins, and shall contain:

(i) A one (1) page cover sheet which includes the date of the proposal; a one-line title; the name and address of the proposer; the name, organization, address and telephone number of a contact person; the total amount of Innovative Grants Program funds requested; the total amount of other funds to be committed; the date by which the project must be initiated to meet all goals; the duration of the project in months; and the names of any other HUD offices or federal agencies to which the proposal (or one similar to it) has been or may be sent for consideration.

(ii) A one (1) page abstract that identifies: the problems addressed by the project; the activities to be undertaken to resolve such problems; and the innovative features of the proposal.

(iii) A narrative description of the project divided into three (3) sections:

(A) A general information section of no more than five (5) pages which briefly describes: the innovative aspects of the project pursuant to § 570.406(a); the specific needs or problems which the project will address; the characteristics of the target group(s) and area(s) to be assisted by the project; how the project fits into existing community development and housing assistance strategies; and the experience and other qualifications of the proposer and any proposed subcontractors or sub-recipients to undertake and successfully complete the project.

(B) A project goals and strategies section of no more than ten (10) pages in length that briefly describes: specific quantitative and other anticipated achievements of the project; each program activity, including a discussion of how these activities can be expected to resolve the needs or problems addressed in the general information section; how the project shall be organized and managed; the responsibilities of any participating public or private groups; the elements of the project that could be replicated by other communities; methods to be used for evaluating and documenting the project experience; specific activities for which Innovative Grants Program funds shall be used and how these activities shall be funded after completion of the grant; any other funds or resources to be committed to the project, the source(s) of such support, and the estimated amount of support needed from each source for the project to be successful; and strategies that have been and/or will be employed to provide citizens likely to be affected by the project, particularly low- and moderate-income persons, an opportunity to comment on the project.

(C) An appendix section of no longer than five (5) pages in length that contains: statements of local support for the project, particularly from target area residents; and additional information that the proposer believes may assist HUD in an evaluation of the project.

(2) Each unsolicited preliminary proposal submitted pursuant to this Section shall be evaluated by HUD using the following criteria:

(i) The extent to which the problems identified may be common to a significant number of other communities.

(ii) The estimated impact of the proposed activities on low- and moderate-income persons.

(iii) The feasibility of the project—i.e., its potential for achieving the goals stated in the proposal.

(iv) The potential for replication by other communities.

(v) The chances of the project being continued beyond the period of the grant with other funding.

(vi) The clarity of plans for organizing and managing the project.

(vii) The presentation of ideas for evaluating and documenting the project experience.

(viii) Prior experience of the proposer and proposed subcontractors or subrecipients with similar activities.

(h) *Solicited Preapplication Requirements.* Preapplications shall comply with the format, content, submission time and other requirements stated in the Federal Register Notice announcing an Innovative Grants Program competition. Preapplication content requirements shall be those listed under § 570.406(g)(1), except that additional requirements may be included that are appropriate to the objectives of a specific competition. Criteria to be used by HUD to evaluate preapplications also shall be stated in the Notice; the criteria specified shall be those listed under § 570.406(g)(2), except that additional criteria may be included that are appropriate to the objectives of a competition. Only data submitted by the deadline established in the Federal Register Notice for receipt by HUD of preapplications shall be considered by HUD in the preapplication evaluation process, unless additional information is specifically requested in writing by HUD. HUD requests shall be limited to clarification of statements in the preapplication. HUD shall not request nor accept for consideration new data that might revise or augment materials already submitted. The HUD request shall include a date for receipt by HUD of the additional information. This information shall not be considered by HUD unless it is received by that date.

(i) *Full Application Requirements.* There are no length restrictions for full applications. Applications shall be accepted only from eligible applicants pursuant to § 570.406(c) and only in response to a HUD letter inviting a proposer or preapplicant to submit a full application. Invitation letters shall contain special instructions, limitations or requirements, including advice on funding levels.

(1) Full applications shall contain Standard Form 424 as prescribed by Office of Management and Budget (OMB) Circular No. A-102 that has been signed by the chief executive officer of the applicable State or unit of general local government; complete answers to all issues, concerns, questions and other requirements stated in the HUD invitation letter; and a two (2) to four (4) page project summary that identifies the problems to be addressed by the project, the project activities to be undertaken to resolve such problems, the expected accomplishments of the project, and the specific activities for which Innovative Grants Programs funds will be used. HUD may require additional information, subsequent to receipt of a full application, in order to answer questions or concerns arising during the evaluation of an application.

(2) HUD shall screen each full application received pursuant to this paragraph to determine if:

(i) All of the requirements of the invitation letter have been met.

(ii) The funds requested in the application do not exceed the amount specified in the invitation letter.

(iii) The activities proposed are those discussed in the unsolicited preliminary proposal or solicited preapplication, and are eligible pursuant to § 570.406(d).

(iv) The application has been submitted to the appropriate State and areawide A-95 clearinghouses pursuant to the requirements of § 570.406(f).

(3) If a full application is not received by HUD within the deadline stated in the invitation letter, the application shall be disqualified; except that, HUD may grant an extension of the deadline of no more than thirty (30) days if HUD believes that circumstances warrant such an extension. The applicant must document reasons for the extension in a letter to HUD requesting an extension. To be considered, the letter shall be received by HUD no later than fifteen (15) days prior to the original deadline.

(4) Full applications shall be evaluated by HUD using criteria listed below and such others as the Secretary may deem necessary and appropriate in particular situations.

(i) The consistency of statements made in the application with available facts and data.

(ii) On the basis of the more detailed full application, whether the activities described in the original unsolicited preliminary proposal or preapplication are:

(A) Likely to be effective in correcting the problems described in the application;

(B) Of benefit to low- and moderate-income groups;

(C) Related to problems that are serious enough to justify the project.

(iii) The existence of firm commitments for non-Innovative Grant funding or other resources necessary for completion of the project;

(iv) The need for Innovative Grant funds, based upon the availability of other funds for the project;

(v) Applicant capacity to undertake and successfully complete the project in a timely manner and within the estimated funds or resources available.

(5) Applicants may be authorized by HUD to incur costs for the planning and preparation of a full application, up to $10,000 or five (5) percent of the Innovative Grant funding limit established in an invitation letter, whichever is lower. Reimbursement by HUD of such costs shall be contingent upon HUD award of a grant for the project. Only those costs associated with the actual planning or preparation of a full application shall be incurred. Such costs shall be subject to the eligible activities requirements of § 570.406(d) and shall be included in the funding limit established in the invitation letter. Costs obligated or incurred prior to the date of the invitation letter shall not be eligible for reimbursement.

(6) Applicants shall comply with the certifications contained in § 570.307 of 24 CFR Part 570, except that (f) is excluded and (d) is modified as follows: the applicant must certify that citizens likely to be affected by the project, particularly low- and moderate-income persons, have been provided an opportunity to comment on the application.

(j) *Selection and Notification.* Each unsolicited preliminary proposal, preapplication or final application received by HUD shall be reviewed by HUD to determine its compliance with the requirements of § 570.406(g), (h) or (i), as appropriate. Those that meet such requirements shall be accepted for review by HUD and shall be evaluated using criteria specified in § 570.406(g), (h), or (i), as appropriate. The final HUD decision to approve, disapprove or conditionally approve a grant shall be communicated in writing to each proposer, preapplicant or applicant, and to the appropriate State and areawide clearinghouses. The effective date of any grant approved or conditionally approved by HUD under § 570.406 shall be the date that the acceptance provisions of the HUD funding approval document (form HUD–7082 or its replacement) are signed by the grantee chief executive officer.

(k) *Post-Approval Conditions.* In addition to other applicable requirements of 24 CFR Part 570, Subpart E, grantees funded under this Section shall comply with the following requirements and any special contract conditions and other terms prescribed in the grant agreement.

(1) The grantee shall comply with the grant requirements and shall incur obligations against the grant and make disbursements of grant funds only in conformity with the latest grant budget approved by HUD; except that, the grantee shall have authority to rebudget funds from one approved budget line item to another, so long as the cumulative effect of any such rebudgeting does not exceed ten (10) percent (plus or minus) of the totals originally approved for that line item, and the administrative cost limitations of 24 CFR 570.200(i) have been exceeded. The approved budget may be revised periodically by the grantee, but no revision shall be effective unless and until HUD has approved it in writing.

(2) Except for contracts involving amounts less than $10,000, or unless otherwise authorized in writing by HUD, the grantee shall not execute any contract or obligate itself in any other manner with any party with respect to the grant prior to notifying HUD in writing and obtaining HUD concurrence. Such notice to HUD shall identify the proposed party or parties to the undertaking, specify the purpose and/or products of the undertaking, and indicate the amount of funds proposed for expenditure in the undertaking.

(3) Within thirty (30) days from the effective date of the grant or as otherwise requested by HUD, the grantee shall submit a work plan to HUD. In addition, within sixty (60) days from the effective date of the grant, the grantee shall submit a final plan for the evaluation of the work performed or procedures and devices developed under the grant that includes: the draft format of the final report to be prepared by the grantee; a strategy for collecting and analyzing data to be used in the final report; and a strategy for maintaining a photographic record of all physical improvements that is complete, of publication quality, and includes both before and after photographs. These plans shall require HUD review and concurrence, and shall be prepared in accordance with specifications provided by HUD to the grantee immediately after the effective date of the grant. The grantee shall be responsible for assuring that all work is performed in accordance with the schedules, costs and other requirements of such plans.

(4) The reporting requirements of 24 CFR Part 570, Subpart O shall apply to this grant, except that technical progress reports are required on a quarterly basis, beginning with the 15th of the month after completion of the first quarter and for each succeeding quarter after the grant becomes effective. The quarterly report format shall be as specified by HUD.

(5) Thirty (30) days prior to the completion of the grant period, or as otherwise requested by HUD, the grantee shall submit three (3) copies of the edited final report to HUD for review and acceptance.

(6) The grantee shall obtain the prior written approval of HUD for the publication of any grant-related reports or other publications during the period of the grant and for six (6) months after the grant period; except that, instructions and other documents issued to further the accomplishment of grant requirements are excluded from this restriction. Any grant-related report or other publication prepared for general issuance shall contain an appropriate statement of the Federal financial assistance provided to the grantee by HUD. HUD shall have unrestricted authority to reproduce, distribute, publish and otherwise use any report, data, or any other type of written material, wholly or in part and for any purpose, that is developed under the grant. In addition, HUD shall have unrestricted authority to use or promote the use of any procedures or devices developed pursuant to the grant.

(7) The grantee shall permit and facilitate follow-up surveys and data collection by HUD that are associated with activities funded under or related to the grant, for a period of three (3) years after completion of the grant period. Such surveys and data collection shall be used by HUD for further, longer term assessment of project impact.

(8) The grantee shall provide HUD with any information required by HUD in the periodic monitoring of grantee activities and performance. Such information shall be provided in the format and schedule required by HUD.

(9) In addition to the corrective and remedial action available under § 570.910, the Secretary may reduce or withdraw a grant made pursuant to this part. For any such reduction or withdrawal action, the provisions of § 570.911 shall apply.

(Section 107 of the Housing and Urban Development Act of 1974 (42 U.S.C. 5307))

Issued at Washington, D.C., July 25, 1980.

Robert C. Embry, Jr.,

Assistant Secretary for Community Planning and Development.

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Part IV

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

PHA-Owned Projects; Project Management; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 865

[Docket No. R-80-853]

PHA-Owned Projects—Project Management; Interim Rule

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Interim rule.

SUMMARY: This interim rule establishes uniform standards and procedures for determining the amounts of utility allowances and surcharges applicable to tenants of dwelling units owned or leased by Public Housing Agencies (PHAs) and assisted under the United States Housing Act of 1937. This interim rule replaces the nonmandatory instructions on utility allowances and surcharges provided by HUD in the local Housing Authority Management Guide Controlling Utility Consumptions and Costs, dated April 1983 (HUD Guide). This interim rule reflects the basic principles of the HUD Guide, with necessary refinement and updating, and will alleviate confusion and controversy arising under the HUD Guide by establishing mandatory standards and procedures applicable to all PHAs. The interim rule does not apply to the Section 8 Housing Assistance Payments Program or to the Mutual Help Homeownership Opportunity Program.

EFFECTIVE DATE: October 1, 1980. Comments due: November 10, 1980.

ADDRESS: Send comments to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Charles R. Ashmore, Utilities Specialist, Room 6241, Office of Public Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410 (202) 755-6640 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice was given on January 5, 1979 in the Federal Register (43 FR 1600) that HUD proposed to add §§ 865.470 through 865.476 to Subpart D applicable to Tenant Allowances for Utilities. That Notice allowed 30 days for public comment; however, since commentors requested additional time for response, HUD extended the public comment period to May 16, 1979 (44 FR 22472, April 16, 1979).

The proposed rule provided for certain changes in the title of Part 865 and in the numbering of certain sections in that Part. These changes are incorporated in this interim rule.

Substantively, the proposed rule provided that Allowances for both PHA-Furnished and Tenant-Purchased Utilities be based upon the actual consumption data for each project. Each Allowance was to be based on the average consumption level for dwelling units, by size of unit in terms of number of bedrooms, as adjusted to reflect consumption trends or other projected changes in utility usage. The PHA was to consider, to the extent feasible, physical characteristics of dwellings (i.e., top floor units, exterior walls, etc.). For PHA-Furnished Utilities, it was proposed that a surcharge be made for consumption in excess of 115 percent of the Allowance, but not to exceed an amount equal to one-third of the tenant's Gross Rent. It was also proposed that a credit be given to any tenant for consumption below 85 percent of the Allowance, but again not to exceed an amount equal to one-third of the tenant's Gross Rent. No such provisions were included for Tenant-Purchased Utilities where, by the very nature of the system, any tenant who consumes less than the Allowance retains the savings and any tenant who consumes above the Allowance bears the extra cost. All Allowances were to be reviewed at least once every year and adjusted, if necessary.

In response to the Notice of proposed rulemaking, a total of 202 comments were received, all of which were carefully considered. The great majority of the comments were made by two groups: (1) Public Housing Agencies and (2) organizations representing tenant's interests. The great majority of the significant comments were critical of the proposed rule, but the objections of each group were for opposite reasons.

(1) PHAs objected to basing Allowances on the average actual consumption as being inconsistent with the Performance Funding System and wasteful of energy. The PHAs recommended that the standard be "adequate", as determined by the PHA or HUD. The tenant groups also objected to the "average" standard for PHA-Furnished Utilities but for the opposite reason; they maintained that the standard was too low. They argued that the Allowances should be established so as to result in surcharge of only very high users, e.g., 5 to 15 percent.

(2) PHAs objected to the 15 percent "free zone" before surcharging, as being unnecessary, wasteful of energy, and negating the value of checkmeters. The tenant groups argued that the 15 percent free zone was inadequate, and that it should be anywhere from 20 to 50 percent. They also argued that checkmetering is not as effective as HUD maintains and should be suspended until all other energy conservation improvements have been made.

(3) PHAs objected that the provision limiting surcharges to ⅓ of gross rent is unwarranted, inequitable and contrary to national energy conservation goals. The tenant groups argued that the ⅓ of gross rent limit should be extended to Tenant-Purchased Utilities.

(4) PHAs objected to the requirement for separate Allowances for each project and for annual adjustments as unworkable and prohibitively expensive. The tenant groups argued that Allowances should be tailored as closely as possible to the conditions and circumstances of the particular dwelling units for which the Allowances are established.

(5) Some PHAs, as well as tenant groups, took the position that energy conservation was best achieved through weatherization activities because this was where the most significant energy waste occurred. Weatherization activities will continue to be an important component of the modernization program, but in themselves they are not a substitute for a system maximizing energy savings on an individual dwelling unit basis.

In light of the sharply differing objections to the most basic features of the proposed rule, the Department concluded that the proposed rule would be considered unacceptable by either group, that it would increase rather than alleviate controversy, and therefore that the proposed rule should be withdrawn. At the same time, however, a continuation of the existing situation, in which there are no mandatory Federal standards, leaving the establishment of Allowances entirely to local discretion, is even less acceptable in terms of the best interests of the program. Many PHAs have been establishing utility allowances based on the HUD-Guide which in general have been considered acceptable both in terms of minimum hardships to tenants, administrative burden on PHAs and costs to the Federal Government. Accordingly, the Department has decided to develop an interim rule based on the general concepts of the HUD Guide, making it effective with no further delay but allowing an opportunity for public comment.

Differences in Utility Service Between Different Utility Metering Systems

Generally, there are three different utility metering systems in the public housing program: (1) Master meter to the housing project, with no checkmeters, (2) Master meter to the housing project with checkmeters for the individual dwelling units, and (3) no master meter to the PHA; only direct utility meters for the individual dwelling units. Concern has been expressed that the HUD systems for encouraging energy savings and for providing tenants with utilities be as consistent as possible.

In case (1), where the utilities are master metered to the housing project, but there are no checkmeters for individual dwelling units, there is no way to measure energy used by each individual unit and thus no direct way to encourage energy conservation. Under present policy (as provided for in the HUD Guide, and augmented by the Public Housing Occupancy Handbook, Chapter 3—Tenant Rents, Section 3.5, paragraph 6, Charges in Addition to Contract Rents) the PHA is authorized to charge for those units which contain special appliances, such as air conditioners which are not otherwise included as authorized equipment for the project. For these tenants utility charges are included in their rent and can vary only to the extent that the tenants own special appliances. In addition, it is HUD policy to encourage the installation of either checkmeters or direct utility meters so that energy usage can be monitored or measured on an individual unit basis and, as a result, energy conservation can be promoted (See § 865.401 through 865.410, Individual Metering of Utilities for Existing PHA-Owned Projects).

In Case (2), where the utilities are master metered to the housing project, and there are checkmeters for the individual dwelling units, it is feasible to encourage energy savings by establishing a maximum limit ("allowance") and surcharging the tenants for consumption above that limit. As explained below, the interim rule will provide for the establishment of this maximum limit at a high enough level to accommodate the consumption of 90 percent of the tenants, and surcharging only those whose consumption is above the 90 percent level. It should be noted, however, that any savings resulting from energy consumption below the 90 percent level inures to the PHA, because the PHA pays the actual utility bills for all the tenants in this group.

In Case (3), where there are no master meters to the PHA, but only the direct meters to the individual dwelling units, each tenant receives its utility bills and pays them directly to the utility suppliers. In order to provide an energy saving incentive, the PHA establishes a monetary "allowance" which, however, should not be confused with the "allowance" used in Case (2). In Case (2), the "allowance", as noted above, is in fact only a *maximum* limit on the amount of utility consumption to be paid for by the PHA, and all savings resulting from usage below this level inure to the PHA. In Case (3), however, the "allowance" is both a maximum and a minimum—it is a flat amount representing what the PHA will pay for. Thus, if an individual's utility bill is more than the allowance, that tenant must absorb the additional cost; but by the same token, if the utility bill is less than the allowance, the tenant retains the benefit of savings. This is accomplished by the providing that the amount of rent otherwise payable by the tenant, based on percentage of adjusted family income, is reduced by the amount of the allowance.

In Case (3), as explained below, the interim rule provides that the allowances shall be based upon the "average" consumption for the group, rather than a 90 percent level as in Case (2). This is the arithmetic average or mean, i.e., the total consumption for the group divided by the number of dwelling units in the group, so that, by definition, the total cost of the allowance to the PHA is equal to the total amount of the utility bills for all the units in the group. There is neither net gain or net loss to the PHA, as compared with the cost in Case (2). This is because any excess cost resulting from consumption above the average is offset by savings resulting from consumption below the average. The Case (3) system, by its nature, places a greater cost burden on those who consume above the average, but by the same token it provides incentive for energy savings because those tenants who consume below the average retain the monetary benefits. It is also possible that utility costs could be higher because tenants cannot obtain the same utility rate as PHAs.

It has been argued that it is inequitable and discriminatory to have three different utility systems and especially to establish allowances at the 90 percent level in Case (2), and to set the allowances at a lower level—the average consumption level—in Case (3). The argument fails to consider the inherent differences between the two systems, and the significant difference in function served by the allowances in them. As stated above, the allowance in Case (2) is a *maximum limit*, and the PHA gets the benefit of lower consumption, so that it is entirely feasible to set this maximum limit at the 90 percent level. In Case (3), however, the allowance is a flat amount—a minimum as well as maximum—and the benefit of lower consumption is retained by those tenants who consume less. Consequently, if the allowance in Case (3) were set at a level higher than the average—at the 80 or 90 percent level for example—the total cost to the PHA would be the total amount of this higher allowance for all the units in the group. This total cost to the PHA would be much greater than the actual total cost for utilities to the tenants in the group, and correspondingly greater than the total cost would be under the system described in Case (2).

The Department has given very careful consideration to this problem and appreciates the importance of achieving similarity of the three systems in so far as feasible. However, it is our judgement that there are inherent differences between the three systems and as a result it is not feasible to provide literal similarity. However, because of this equity concern, the Department is very interested in receiving suggestions and comments on ways it might be possible to increase equity across the three systems. The Department is also interested in receiving comments on the specific allowance levels established in this interim rule.

Summary and Explanation of Principal Features of Interim Rule

1. The rule will not apply to dwelling units which are served by PHA-Furnished Utilities unless checkmeters have been installed to measure the actual utility consumption of the individual units.

2. Separate Allowances will be established for categories of dwelling units which are reasonably comparable in regard to basic characteristics affecting utilities consumption. PHAs will determine the appropriate structure categories, and within any given structure category will establish Allowances for different size units, in terms of number of bedrooms.

Individual differences among units, such as location within a building or direction of exposure generally, will not be considered. Such precision of detail when attempted in establishing Allowances has produced results which have been uncertain and controversial, and any possible benefits have not justified the detailed administrative work involved.

3. In establishing the structure categories, the PHA will include structures that are generally comparable as to age and construction type, and have the same utility combinations and the same size and type of major utility consuming equipment. Walk-up apartments, elevator buildings, row dwellings and detached dwellings are the basic structure types.

Scattered site units may present a special problem because of their diversity. If the PHA has in its program at least 25 units which are sufficiently comparable, these units will be used as a category. If fewer than 25 such units are in the PHA Program, the PHA may, if available from the local utility or other sources, include consumption data for comparable non-PHA units and will closely monitor the results.

4. Allowances for housing in a given category will be based on consumption records for the housing in that category, using records for the most recent consecutive three years, two years or one year, depending upon availability of records. If records are not available for the particular housing category for an entire year, records for the most comparable PHA housing will be used. If the data base consists of less than three consecutive years for the particular housing, the Allowances will be reviewed each year until a three-year data base is achieved.

5. These rules (paragraphs 2–4) will apply for both PHA-Furnished and Tenant-Purchased Utilities, but since the tenants in the latter cases receive the utility bills, the interim rule provides that each PHA shall establish a system for obtaining the tenants' consumption data for use in establishing and revising their Allowances.

6. The standards for establishing and revising Allowances in the case of PHA-Furnished Utilities reflect the basic principles of the HUD Guide. There has been some misunderstanding of the Guide because of the statement therein that the Allowance should normally be set at about 20% more than the average for the particular group. However, the HUD Guide also states that the Allowance shall be sufficient to permit the great majority of tenants to use the utility without surcharge, and that if experience shows that more than 25% of tenants are being surcharged the Allowance should be reviewed and revised so that about 10% of the tenants will be surcharged. To carry out the basic plan of the HUD Guide, the interim rule provides that the Allowances should be set at the level at which 90% of the tenants will be covered without being surcharged. Before applying the 90% standard, the PHA will exclude from consideration any unusually high instances of consumption that appear to be due to abuse or wasteful practices. Revisions will not be made until the number of surcharge cases reaches 25 percent at which time the Allowance will be adjusted on the basis of the 90% standard.

7. In the case of Tenant-Purchased Utilities, the basic standard for establishing the Allowance will be the average consumption for the dwelling units in the category. This is consistent with the standard contained in the HUD Guide as well as the standard contained in the proposed rule. Since those individuals who consume less than the average retain the savings, while those who consume more than the average bear the excess cost, this standard for establishing the Allowance results in a total cost to the PHA no more and no less than if the PHA were paying the utility bills to the supplier. The resulting total cost to the PHA is thus the same (except for any difference between retail and wholesale rates) as in the case of PHA-Furnished Utilities.

8. In the case of PHA-Furnished Utilities, tenants will be surcharged for consumption above the Allowance, which may be in blocks. There will be no so-called "free zone" before surcharging because the 90% standard is deemed to be sufficiently generous. Surcharge will be based only on the utility rate as applied to the excess consumption; there will be no charge for PHA administrative expense.

9. Allowances for PHA-Furnished Utilities will be monitored regularly and whenever more than 25 percent of the units are surcharged there will be a review and revision, if appropriate, to restore the allowance on the basis of the 90 percent standard.

10. In the case of Tenant-Purchased Utilities, revisions because of changes in utility rates will be made when the cumulative rate change is 10 percent. Reviews for changes in consumption levels will be made only at three-year intervals unless there is a change in circumstances indicating a significant change in average consumption levels.

11. The allowances are intended to provide for utility consumption for authorized purposes, which in general include the use of major appliances or equipment furnished by the PHA and minor appliances including those furnished by the tenants. Because of possible variations among PHA projects, the interim rule requires each PHA to include with its rent schedule and the allowances a statement of the major appliances and equipment whose consumption requirements are included in determining the amount of the allowance.

12. Allowances for PHA-Furnished Utilities will usually be on a quarterly basis and will reflect season variations. For Tenant-Purchased Utilities, the allowances will be on a monthly basis and may reflect season variations.

13. Requests for individual relief will be authorized (a) where consumption for a billing period is so far out of line with previous periods as to indicate possible defect in the meter or error in meter reading and (b) where there is a defect in the dwelling unit or in PHA-Furnished equipment which the PHA has a duty to repair and which is causing an abnormal increase in consumption. This does not include deficiencies in original design such as inadequate insulation, absence of storm windows, etc. In addition, in the case of Tenant-Purchased Utilities only, requests for relief may be granted where utility consumption exceeds the applicable allowance by 20 percent or more for reasons other than wasteful or unauthorized usage. All investigations for individual relief will include investigation of whether excess consumption is due in whole or in part to wasteful or unauthorized usage or to the characteristics of the individual unit, and where appropriate the PHA will advise and assist the tenant on methods of reducing utilities usage.

14. In order to allow a reasonable time for PHAs to assemble the records and data and establish allowances in accordance with the standards and procedures of this interim rule, the rule provides that they shall proceed promptly, but shall establish allowances effective no later than 120 days from the effective date of this rule. This time period may be extended if good cause is shown and HUD approves.

Energy Saving Credit

In the case of Tenant-Purchased Utilities, an energy saving feature is inherent in the system. If a tenant conserves the use of utilities and his or her utility bills fall below the amount of the allowance, the tenant retains the savings.

In the case of PHA-Furnished Utilities, where the utility bills are paid by the PHA, the problem of devising a suitable energy saving credit plan is far more difficult. A literal parallel to the Tenant-Purchased Utilities situation would suggest that energy credits be allowed for consumption below the allowance. As a practical matter, however, such a plan is not acceptable because with the allowance set at a point high enough to cover 90 percent of the tenants, all tenants except those being surcharged would be entitled to energy credits, but

there would be no net saving in total energy consumption or in total cost to the PHA.

Consideration was given to the possibility of allowing energy saving credits for those tenants whose consumption falls below the average consumption for the group. Since by definition, half the amount of consumption is below the average to begin with, many tenants under such a plan would receive energy saving credit without having made any actual reduction from their previous rate of consumption. There would be no way under such a plan of assuring that the amount of the energy saving credit is matched by a corresponding reduction in overall consumption or in net overall cost to the PHA. At the same time, the plan would offer no incentive to tenants whose consumption has been above average, unless they were so close to the average that they could hope to achieve a substantial reduction below the average.

Justification

The Department has determined that a delay in effectiveness of this rule is impracticable and contrary to the public interest because of the urgent need for PHAs to revise allowances for utilities before the coldest months of the 1980–81 heating season. The revised allowances will reflect current tenant consumptions and utility rates and will, in many cases, alleviate tenant hardship. Accordingly, this rule is being published as an interim rule effective as of the date stated above. However, interested persons are invited to participate in the making of the final rule by providing written comments as described above. All comments received by the due date will be considered in the development of the final rule. Copies of comments received will be available for inspection and copying at the above stated address.

A finding of inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this finding will be available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

This rule is listed as item number H–95–78 in the Department's semi-annual agenda of significant rules, published pursuant to Executive Order 12044.

Accordingly, Title 24 is hereby amended by (1) changing the title "Part 865—PHA-Owned Projects—Project Management" to read "Part 865—PHA Owned or Leased Projects—Maintenance and Operation," (2) revising the index of sections as shown below, and (3) by adding new §§ 865.470 through 865.482, "Tenant Allowances for Utilities," to read as follows:

PART 865—PHA-OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATION

* * * * *

Subpart D—Utilities

Individual Metering of Utilities for Existing PHA-Owned Projects

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Tenent Allowances for Utilities

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865.479 Surcharges for excess consumption of PHA-furnished utilities.
865.480 Review and revision of allowances.
865.481 Individual relief.
865.482 Establishment of allowances under secs. 865.470 through 865.481.

Authority: Sec. 6(a)(4) United States Housing Act of 1937 (42 U.S.C. 1437d); Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. § 3535(d)).

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Subpart D—Utilities

Individual Metering of Utilities for Existing PHA-Owned Projects

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§ 865.470 Purpose.

The purpose of §§ 865.470 through 865.482 is to establish procedures to be used by PHAs in establishing and administering Allowances for PHA-Furnished Utilities and Allowances for Tenant-Purchased Utilities. Allowances for PHA-Furnished Utilities represent the maximum consumption units (e.g., kilowatt hours of electricity) which may be used by a dwelling unit without a surcharge for excess consumption against the tenant. Allowances for Tenant-Purchased Utilities represent fixed dollar amounts which are deducted from the Gross Rent otherwise chargeable to a tenant who pays the actual Utility charges directly to the Utility suppliers whether they be more of less than the amounts of the Allowances.

§ 865.471 Applicability.

(a) Except as provided in paragraph (b) of this section, §§ 865.470 through 865.482 apply to all dwelling units assisted under the United States Housing Act of 1937 in projects owned by or leased to PHAs and leased or subleased by PHAs to tenants, except the Section 8 Housing Assistance Payments Program and the Mutual Help Homeownership Opportunities Program.

(b) Sections 865.470 through 865.482 do not apply to dwelling units which are served by PHA-Furnished Utilities unless Checkmeters have been installed to measure the actual Utilities consumption of the individual units but tenants in such units are subject to charges for consumption of tenant-owned major appliances in accordance with § 866.4 of this chapter.

§ 865.472 Definitions.

Checkmeter. A device for measuring Utility consumption of each individual dwelling unit where the Utility service is supplied through a Mastermeter System. The PHA pays the Utility supplier for the Utility service on the basis of the Mastermeter readings and uses the Checkmeters to determine whether and to what extent of the Utility consumption of each dwelling unit is in excess of the Allowances for PHA-Furnished Utilities.

Contract Rent. The amount of rent payable by the tenant to the PHA. In the case of PHA-Furnished Utilities, the Contract Rent is the same as the Gross Rent. In the case of Tenant-Furnished Utilities, the Contract Rent is the Gross Rent minus the amount of the Allowances for Tenant-Purchased Utilities. This definition of Contract Rent is not the same as contract rent for purposes of 24 CFR Parts 880 to 889.

Gross Rent. The rent chargeable to a tenant for the use of the dwelling accomodation and equipment (such as range and refrigerator, but not including furniture), services, and Utilities not to exceed the Allowances for PHA-Furnished Utilities or the Allowances for Tenant-Purchased Utilities, as applicable. This definition of Gross Rent is not the same as gross rent for purposes of 24 CFR Parts 880 to 889.

Mastermeter System. A Utility distribution system in which a PHA is

supplied Utility service by a Utility supplier through a meter or meters and the PHA then distributes the Utility service to its tenants.

Surcharge. The amount charged by the PHA to a tenant, in addition to the tenant's Contract Rent, for consumption of Utilities in excess of the Allowance for PHA-Furnished Utilities included in the Contract Rent.

Utility. Electricity, gas, heating fuel, water and sewerage service, and trash and garbage collection. Telephone service is not included as a Utility.

§ 865.473 Establishment of allowances by PHAs.

(a) *Basic Requirement.* PHAs shall establish (1) Allowances for PHA-Furnished Utilities for all Checkmetered Utilities and (2) Allowances for Tenant-Purchased Utilities for all Utilities purchased directly by tenants from the Utilities suppliers. These Allowances shall be incorporated into the PHA's rent schedules and shall be submitted for approval by the HUD field office, after compliance with requirements of notice to tenants prescribed under 24 CFR part 861.

(b) *Authorized Uses of Utilities on which Allowances Are Based.* Allowances for both PHA-Furnished and Tenant-Purchased Utilities shall be designed to include Utility consumption requirements for major equipment furnished by the PHA (for example, heating furnace, hot water heater, range and refrigerator) and for minor items of equipment (such as toasters and can openers) furnished by the tenants. To avoid misunderstanding, the PHA shall include with the rent schedules a statement of the specific items of major equipment whose Utility consumption requirements were included in determining the amounts of the Allowances. This does not mean that tenants may not supply and use other items of major equipment, but if they do so the cost of any Utility consumption in excess of the applicable allowance will have to be borne by the tenant.

§ 865.474 Dwelling unit categories for establishment of allowances.

(a) *Structure type Categories.* Separate Allowances shall be established for each utility and for each category of dwelling units within structures which are reasonably comparable as to age and construction type, have the same utility combination and the same type and size of major equipment. Walk-up apartments, elevator buildings, row or townhouse dwellings, and detached or semi-detached dwellings shall constitute different structure types, but consideration may also be given to other major construction differences which have a significant effect on utility consumption. Generally, PHAs should include in the same structure type category all structures of similar design and equipment which were constructed at about the same time and are located within an area which experience very similar weather conditions.

(b) *Scattered site units.* In the case of scattered site dwelling units which were acquired by the PHA, with or without rehabilitation, the PHA shall determine to what extent the units are comparable so as to permit their being treated as one structure type category for purposes of establishing Allowances. If the number of units which can be reasonably so grouped is insufficient for this purpose (i.e., generally, less than 25 units), the PHA should include in its data base the best available Utility consumption data with respect to comparable units not in the PHA's program. In such cases, the PHA shall monitor the consumption experience of the units within its program as well as the non-PHA units, and thereafter revise its data base in light of that experience (see Section 865.476).

(c) *Dwelling Unit Categories by Size of Dwelling Unit.* Within each structure type category, separate Allowances shall be established for units of different size, i.e., Efficiency or 0-bedroom, 1-bedroom, 2-bedroom, 3-bedroom, 4-bedroom, 5 or more-bedroom. Variations shall not be made for such factors as dimensions of the rooms or dwelling units and generally not by reason of factors such as upper or lower floor, number of exposed walls, or direction of exposure. However, if the PHA determines that there are sufficient differences between dwelling units it may designate a category to reflect those differences.

§ 865.475 Period of allowances.

(a) *For PHA-Furnished Utilities.* Preference shall be given to setting Allowances on a quarterly basis appropriately adjusted to reflect season variations, because this results in lower costs for meter reading and bookkeeping, and may also reduce the number of tenants surcharged due to averaging consumption over the three-month period. Monthly Allowances may be used where justified by special circumstances such as high tenant turnover or where excess consumption is extremely high. If in a locality the billing for a Utility, such as water and sewerage service, is on a longer-term basis, such as semi-annually, the Allowance computed for that Utility may be set for a corresponding period and pro-rated to the quarterly allowance.

(b) *Tenant-Purchased Utilities.* The amount of the Allowance for Tenant-Purchased Utilities is deducted from the Gross Rent in computing the amount of the Contract Rent payable by the tenants to the PHA. Monthly Allowances shall be established at a uniform amount, based on average monthly utility requirements for a year; however where utility company level payment plans (customers of a utility company pay to the utility company a uniform amount each month) are unavailable to PHA tenants and a uniform monthly allowance may result in hardships the allowances established may provide for seasonal variations. HUD, if approving this action, will provide the PHA with instructions regarding adjustments necessary in the rental income estimates used for computation of operating subsidy payable under the Performance Funding System.

§ 865.476 Data upon which allowances shall be based (PHA-Furnished and Tenant-Purchased Utilities).

(a) *Where records are available for the particular housing.* The portion of the Allowance applicable to each Utility shall be based upon the consumption records (consumption and cost records in the case of Tenant-Purchased Utilities) for the particular structure type category (865.474) for the most current three-year period. Because of seasonal variations in the use of Utilities, each year shall consist of 12 consecutive months. If records are not available for a three-year period, the PHA shall use records for the most current two-year period or, if such records are unavailable, for the most current one-year period. If records are not available for the particular housing category for the entire year, records for the most comparable PHA housing will be used. Allowances based on records for only a one-year period should be adjusted for normal weather conditions.

(b) *Where records are not available for the particular housing.* For new housing or existing housing for which adequate records covering a full year are not available, the Allowances shall be based on records for the most comparable PHA housing in the area as to construction type and size of units, utility combinations, climatic conditions, and types of equipment. Utilities data for comparable projects shall be obtained from the records of PHAs, the Utility suppliers or the HUD Field Office. See also § 865.474(b) with respect to scattered site dwelling units.

(c) *Source of data for Tenant-Purchased Utilities.* In the case of Tenant-Purchased Utilities, the PHA must establish a special procedure for obtaining the consumption data for those dwelling units. The PHA shall utilize a method which it finds best taking into consideration practicability, reliability, and administrative cost. Such methods may include, for example, arrangements with Utility suppliers to furnish consumption data to the PHA (without identification of the users, if the Suppliers so prefer); meter readings by the PHA; having the tenants furnish copies of their utility bills (or making them available for copying) in connection with the payments of their monthly rents.

§ 865.477 Standards for allowances for PHA-furnished utilities.

The Allowances for PHA-Furnished Utilities for each dwelling unit category and unit size shall be established in terms of consumption units, sufficient to meet the requirements of about 90% of the dwelling units in the category. Conversely, the Allowances should be such as are likely to result in surcharges for about 10% of the dwelling units. The basic method of determining the Allowances should be as follows:

(a) The dwelling unit consumption data for all units within each dwelling unit category and unit size should be listed in order from low to high consumption for each billing period.

(b) The PHA should determine whether there are any unusually high instances of consumption which might be due to unusual individual circumstances, wasteful practices, or use of the Utility for tenant-supplied major appliances. The PHA should exclude such cases from consideration in calculating the amount of the allowance.

(c) Where the available data covers two or more years, averages should be computed and adjustments made, if warranted, by reason of abnormal weather conditions or other changes in circumstances affecting utility consumption.

(d) The Allowances should then be established at the level which can reasonably be expected to meet the requirements of 90% of the dwelling units in the category.

§ 865.478 Standards for allowances for tenant-purchased utilities.

In the case of Tenant-Purchased Utilities, the Allowance is provided in terms of a fixed number of dollars made available to each tenant in the dwelling unit category for purposes of paying his or her Utility bills. If a tenant's Utility expense is less than the Allowance, the tenant retains the benefit, while if a tenant's Utility expense is more than the Allowance, the tenant must absorb the excess cost. In these circumstances, in order for the total Utility expense to the PHA for the particular dwelling unit category to be equal to the total of the Utility bills for all the dwelling units in that category, the amount of the Allowance for each dwelling unit must be established at the average amount per dwelling unit. Accordingly, the basic method of determining the Allowance should be as follows:

(a) Proceed as stated in paragraphs (a) through (c) of § 865.477.

(b) Determine the total amount of consumption for each month for all the dwelling units in the category, and divide by the number of dwelling units, in order to obtain the average amount of consumption per dwelling unit for that month.

(c) Apply the current rate structure of the Utility supplier to each month's average amount of consumption in order to compute the dollar cost of each month's average amount of consumption. The result will be the monthly Allowances for Tenant-Purchased Utilities for the particular Utility and dwelling unit category involved.

§ 865.479 Surcharge for excess consumption of PHA-furnished utilities.

PHAs shall include in their rent schedules for dwelling units subject to Allowances for PHA-Furnished Utilities, schedules of Surcharges indicating the additional dollar amounts tenants will be required to pay for Utility consumption in excess of the Allowances. These Surcharge Schedules may show the amounts of Surcharge for specific blocks of excess consumption rather than amounts computed on a straight per-utility-unit basis. The amount of the Surcharge for each block shall be computed by applying the Utility Supplier's average rate to the amount of excess consumption.

§ 865.480 Review and revision of allowances.

(a) *Revisions by Reason of Inadequate Data Base (for PHA-Furnished Utilities).* Where the data base for establishment of the Allowance consisted of less than three years for the particular housing, the PHA shall review the Allowances at the end of each year, taking into consideration the data for the particular housing, until an Allowance based on records for three years for the particular housing has been established.

(b) *Allowance for PHA-Furnished Utilities.* (1) At the end of each quarterly or other billing period, in connection with the determination of surcharges, the PHA shall determine the number and percentage of tenants who are subject to surcharge. When the PHA finds that the percentage of surcharge cases is more than 25 percent of a category and there is no reason of a non-recurring nature (such as weather extremes) to account for this, the PHA shall review the consumption data and if appropriate, establish a revised Allowance in accordance with Section 865.477.

(2) No separate revisions in the allowance by reason of changes in Utility rates are necessary because the PHA is billed directly by the Utility suppliers at their current rates and, by the same token, the PHA uses current rates in computing surcharges.

(c) *Allowances for Tenant-Purchased Utilities.* (1) Since the tenants in these cases are billed directly by the Utility suppliers at their current rates, the PHA shall monitor the rates on a monthly basis. Whenever there is a rate change which, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more, the PHA shall revise the Allowance accordingly.

(2) The average consumption levels on which the Allowances are based shall be reviewed and revised in accordance with § 865.478 in the event of any change in circumstances indicating probability of a significant change in average consumption levels, but in any event once every three years.

(d) *Effective Date of Revised Allowances.* In order to allow a reasonable time for PHA determination and processing of a revision in Allowances, a revised Allowance shall take effect with the next billing period following compliance with requirements of notice to tenants prescribe under 24 CFR Part 861.

§ 865.481 Individual relief.

(a) Requests for relief from surcharges for excess consumption of PHA-Furnished Utilities or from Utility supplier billings in excess of the Allowances for Tenant-Purchased Utilities may be submitted to the PHA on the following grounds:

(1) The consumption for the billing period is so far out of line with previous billing periods (seasonally adjusted) as to indicate a possible defect in the meter or error in the meter reading.

(2) A defect in the dwelling unit of PHA-Furnished equipment is causing a substantial and abnormal increase in Utility consumption. The term "defect" means a condition which the PHA has a

duty to repair, such as windows or doors which do not close in accordance with their original design, broken windows, damaged walls, etc. The term "defect" does not include a deficiency in the original design, such as inadequate insulation by current standards, absence of storm windows, etc.

(3) In the case of Tenant-Purchased Utilities only, that the utility consumption exceeds the applicable Allowance by 20 percent or more for reasons other than wasteful or unauthorized usage.

(b) Requests for relief on the grounds authorized by this section shall be investigated by the PHA, which shall conduct or cause to be conducted, an energy audit of the unit to determine whether excess utility consumption is reasonable, given the characteristics of the specific dwelling unit, and appropriate relief shall be granted in accordance with the findings of the PHA.

(c) Where the PHA finds that excess utility consumption is due to wasteful or unauthorized usage, the PHA shall advise and assist the tenant on methods of reducing the utilities usage. This advice and assistance may include counseling, installation of new energy conserving equipment or appliances and corrective maintenance.

§ 865.482 Establishment of allowances under §§ 865.470 through 865.481.

It is recognized that a reasonable time must be allowed for PHAs to assemble the records and data and establish allowances in accordance with the standards and procedures set forth in §§ 865.470 through 865.481, after providing an opportunity for tenant comment as required by section 866.5 of this chapter. Accordingly, PHAs shall proceed to accomplish these results as promptly as possible, but shall establish such allowances effective as of a date no later than 120 days from the effective date of this rule or extended date, if approved by HUD.

Issued at Washington D.C., July 25, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 80-27643 Filed 9-8-80; 8:45 am]

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September 9, 1980

Part V

Department of Housing and Urban Development

Office of Assistant Secretary for Fair Housing and Equal Opportunity

Nondiscrimination and Equal Opportunity in Fair Housing Under Executive Order 11063

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 107

[Docket No. R-80-700]

Nondiscrimination and Equal Opportunity in Housing Under Executive Order 11063

AGENCY: Department of Housing and Urban Development

ACTION: Final rule.

SUMMARY: Executive Order 11063, Equal Opportunity in Housing was issued November 20, 1962 (27 FR 11527). Regulations implementing the Executive Order were issued under program authorities administered by various agencies that were incorporated in the Department of Housing and Urban Development when it was established in 1965. These are the first Department-wide regulations proposed under E.O. 11063.

Pursuant to the delegation of authority with respect to E.O. 11063 from the Secretary of Housing and Urban Development to the Assistant Secretary for Equal Opportunity, now the Assistant Secretary for Fair Housing and Equal Opportunity, 37 FR 12253 (June 21, 1972), this final rule establishes compliance and enforcement procedures to be utilized by the Department in implementing its responsibilities under the Executive Order. The Department will revise obsolete regulations concerning Nondiscrimination and Equal Opportunity in Housing, 24 CFR 200.300.

DATES: Effective: October 1, 1980.

FOR FURTHER INFORMATION CONTACT: Ellen Stern, Special Assistant, Assistant Secretary for Fair Housing and Equal Opportunity, Room 5108, Department of Housing & Urban Development, 451 7th Street, SW., Washington, D.C. 20410, Telephone No. (202) 755-6113. This is not a toll free number.

SUPPLEMENTARY INFORMATION: E.O. 11063 directs Federal departments and agencies to take all action necessary and appropriate to prevent discrimination because of race, color, creed, or national origin (1) in the sale, leasing, rental or other disposition of residential property and related facilities which are owned or operated by the Federal Government or provided with Federal assistance; and (2) in the lending practices with respect to residential property and related facilities of lending institutions insofar as such practices relate to loans insured or guaranteed by the Federal Government.

The purpose of these regulations is to establish a process to implement E.O. 11063; state the discriminatory practices prohibited by E.O. 11063; provide for affirmative action to overcome the effects of past discrimination and to prevent discrimination; and establish procedures and sanctions regarding the Department's enforcement of the Order.

The process established by the regulation to implement the Executive Order includes the following: (1) compliance meetings, to provide a forum for informal resolution of complaints; (2) compliance reviews; and (3) imposition of sanctions. The process is structured to exhaust informal avenues for resolution prior to imposition of sanctions. Specifically, upon receipt of a complaint or other indication of violation of the Executive Order, a compliance meeting is scheduled with the respondent to attempt to resolve the matter informally. If the respondent fails to appear or resolution fails, a compliance review is initiated by the Director of the Office of Regional Fair Housing and Equal Opportunity (FH&EO). Additionally, a compliance review may be scheduled, even in the absence of indication of a violation, for monitoring purposes or other legitimate purposes. Following completion of the review, a report is made to the Assistant Secretary for FH&EO for determination whether the respondent is in compliance or noncompliance with the Executive Order. In the event of a finding of noncompliance, the Assistant Secretary for FH&EO, pursuant to Notice to respondent of such a finding, may apply sanctions as provided in § 107.60.

Notice of a proposed amendment to Title 24 to issue these regulations as Part 107 was published in the Federal Register on September 26, 1979 (44 FR 55522) and comments were received from interested persons and organizations. Consideration was given to each comment. In general, comments of civil rights organizations reflected the following major concerns: the relationship of the Executive Order and this regulation to Title VI of the Civil Rights Act of 1964; role of the complainant; definition of discriminatory practices; and statute of limitations on the filing of complaints. Commenting regulatory agencies questioned coverage of regulated financial institutions by the rule as duplicatory. Other comments concerned, primarily the record keeping requirements and rights of respondents in addressing complaints and responding to findings pursuant to compliance reviews. These major areas of comment are addressed below.

Applicability of the Rule to Title VI Matters

The proposed rule stated that where discrimination on the grounds of race, color or national origin was cognizable under E.O. 11063 and involved a matter subject to Title VI of the Civil Rights Act of 1964, the provisions of that Title and its implementing regulations (24 CFR Part 1) would apply.

A number of commentors indicated that this language appeared to be a misconstruction of the statutory language of Title VI with regard to contracts of insurance or guaranty.

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color or national origin in programs of Federal financial assistance. Section 602 of the Title specifically exempts from coverage assistance by way of contract of insurance or guaranty. Further, Section 605 of Title VI provides that "Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of contract of insurance or guaranty."

In implementing Title VI of the Civil Rights Act of 1964, the Department by regulation has provided that the provisions of Title VI take precedence over all previous orders and regulations. However, the Title VI regulation states that the provisions of E.O. 11063 and any regulations issued thereunder insofar as they prohibit discrimination on the ground of race, color or national origin in any program or activity or situation to which Title VI does not apply are not superseded.

In view of the fact that Title VI supersedes only those provisions of E.O. 11063 regarding Federal financial assistance other than that provided by way of a contract of insurance or guaranty, the Department agrees that the reference to matters as cognizable under E.O. 11063 and Title VI is misleading. This Section has been revised to state that where allegations of discrimination on the grounds of race, color or national origin arise in a program or activity of Federal financial assistance which does not involve a contract of insurance or guaranty, the matter shall be processed in accordance with Title VI and its implementing regulations.

Thus, any complaint alleging discrimination on the basis of race, color, creed or national origin in a Department program or activity

involving a contract of insurance or guaranty will be received and processed pursuant to this Part. Where sanctions for the violation are imposed pursuant to the Department's Debarment, Suspension and Ineligibility Regulations (Part 24 of this Title) the participant, pursuant to the Department's authority to administer its programs and activities, can be excluded from participation in all Department programs for a specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance.

Role of Complainants and Respondents

Civil rights organizations commented in detail about the role of complainants in the enforcement procedures established by the rule. These commentors proposed inclusion of provisions for more active involvement of complainants as parties to matters in connection with the enforcement and compliance review processes. The compliance and enforcement system provided in E.O. 11063 establishes a process for Federal agencies to refuse to continue or to extend assistance in their programs and activities to persons who violate the requirements of the Executive Order. While the Department can address issues raised in connection with complaints and attempt in negotiations to achieve redress for complainants, its imposition of sanctions will not result in vindication of individual claims. The Department has determined, therefore, that it would be inappropriate to provide complainants with the status of parties in these procedures. However, in response to these comments, a variety of revisions have been incorporated to provide complainants with information regarding matters which are the subject of compliance investigation or review and to afford them a full opportunity to participate in the administrative processing of their complaints.

Specifically, provisions of the rule relating to complaints and to enforcement have been revised to provide for notice to complainants at all stages of proceedings under this regulation regarding determinations of compliance and to provide complainants an opportunity to attend compliance meetings. Complainants also will receive a copy of the compliance report and findings and will be given an opportunity to review the compliance review file and provide comments thereon. Additionally, the intent of this rule is that whenever a complainant alleges, pursuant to the Executive Order, a discriminatory practice which is also covered by Title VIII, it shall be the responsibility of the Department to advise the complainant of the right to file a complaint pursuant to Title VIII and to inform him or her of the Department procedures available under that Title. These two major areas of revision reflect the conviction of the Department that a complainant who alleges the existence of a discriminatory housing practice should be given information about matters under review and access to all available remedies. Additionally, since initial attempts to review compliance will involve specific matters raised in a complaint, the Department has decided that the complainant should have an opportunity to assist the Department in attempts to resolve the specific matter informally previous to initiation of more comprehensive review, through a formal Department compliance review, of the respondent's total Department funded activities.

Accordingly, §§ 107.35, 107.40, 107.50, and 107.55 as revised will now assure notification of the complainant of every step planned and every determination made in the enforcement process, including initial findings relative to the complaint; notice of compliance meetings; outcome of compliance meetings; intent to conduct compliance review or to refer matters to the Assistant Secretary for FH&EO for possible imposition of sanctions; and notification of date of compliance reviews and outcome of such reviews. Additionally, § 107.40 has been amended to provide for participation of complainants in compliance meetings (through addition of a new Subsection(c)) and to allow complainants representation by counsel (Subsection (e)) at such meetings.

In response to other comments, provision has also been made for more adequate notification of respondents and greater opportunity for respondents to address findings of violations. Section 107.40 has been revised to provide for notification to the respondent of the allegations contained in a complaint and of the matters to be addressed in a compliance meeting. Section 107.55 has been amended to provide that a notice of noncompliance pursuant to a compliance review shall afford the respondent seven days to respond to the violations found and to resolve and remedy violations in the compliance report prior to referral of the matter to the Assistant Secretary for FH&EO.

Definition of "Discriminatory Practice"

Three major areas of concern were articulated by civil rights organizations in their comments on the definition of "discriminatory practices": (1) Inadequate cognizance of the "effects test" in defining such practices; (2) Implied narrowness in the applicability of the definition; and (3) Need for more guidance to identify specific prohibited practices under the Executive Order, particularly in areas such as steering and redlining.

With respect to the effects tests issue, commentors suggested that failure to state explicitly in the rule its applicability to practices which have the effect of denying benefits to protected persons would result in interpretations that only intentional acts of discrimination are covered. It is not the interpretation of the Department that the Executive Order requires the existence of intent to discriminate as an essential element in establishing discriminatory practices; on the contrary, the Department believes that matters which appear neutral on their face in many cases may constitute violations of E.O. 11063 by virtue of their impact on protected groups. Nothing in the proposed rule was inconsistent with this conclusion. However, in order to more clearly state the Department's position in this area two revisions to the proposed rule have been adopted. Section 107.15(g)(1) has been revised to include explicitly in the definition of "discriminatory practices" activities which are discriminatory in effect. A new section 107.51, further, sets the standard for findings of noncompliance with the Executive Order, and includes among the basis for such findings the existence of a practice which is discriminatory in effect, unless a respondent can establish that such practice is designed to serve a legitimate business necessity or governmental purpose of the respondent unrelated to race, color, creed or national origin; that it carries out effectively the interest it is designed to serve; and that no alternative course of action would enable the respondent's interest to be served with less discriminatory impact. A practice with discriminatory effect is characterized as a policy or practice, or "any arrangement, criterion or other method of administration which has the effect of denying equal housing opportunity or which substantially impairs the ability of persons to apply for or receive the benefits of assistance. . . ."

With regard to the scope of practices covered, a number of commentors stated that the discriminatory practices defined did not fully cover the range of prohibited housing practices. These commentors pointed out that the regulation did not address the relationship of E.O. 11063 enforcement

and compliance with the fair housing provisions of Title VIII of the Civil Rights Act of 1968. In response to these comments, § 107.15(g)(4) of the proposed regulation has been revised to state that a finding of a violation of Title VIII or of a state or local fair housing law with respect to activities covered by E.O. 11063 shall constitute a discriminatory housing practice under the Executive Order. Additionally, § 107.60 has been revised to provide that such violations can be a basis for the initiation of sanctions under this Part.

New regulations to describe practices and activities which constitute discriminatory housing practices are now under development to implement the Secretary's responsibility to investigate and to attempt to resolve matters under Title VIII. These regulations will serve to provide more explicit guidance to identify violations in such areas as redlining, steering, and residential financing. As indicated, findings of violations of Title VIII with respect to activities also covered by E.O. 11063, are a basis for the imposition of sanctions pursuant to the Executive Order. It is the judgment of the Department that this regulation establishing a compliance procedure implementing E.O. 11063 should define discriminatory housing practices generally, rather than in detailed form.

Comment received from groups representing handicapped persons objected to the fact that the definition of discriminatory practices does not include reference to handicapped persons, pursuant to the provisions of Section 504 of the Rehabilitation Act of 1973. Section 504 prohibits discrimination against persons solely on the basis of handicap in programs and activities of Federal financial assistance. Under Section 504, each Federal Department and agency is responsible for assuring that all its programs of Federal financial assistance are administered in a nondiscriminatory manner. Each Federal Department and agency also is required to develop regulations implementing this Section 504 requirement. The Department has published proposed regulations regarding nondiscrimination based on handicap in its programs 43 FR 16656 (April 19, 1978). As proposed, these regulations would describe discriminatory practices and would be applicable to all Department programs of Federal financial assistance.

Inasmuch as E.O. 11063 does not cover discrimination based on handicap and in view of the fact that the Department has proposed implementation of Section 504 in its programs and activities in a separate Part of 24 CFR, these comments have not been adopted in the final rule.

Statute of limitations for Filing Complaints

Several commentors criticized the provision in the proposed rule (§ 107.35) that complaints must be filed within 180 days of the alleged act of discrimination. These comments suggested that the time limit for filing complaints be extended. The final rule adopts this suggestion and provides that complaints may be filed within one year of the alleged discriminatory practice.

Recordkeeping

Section 107.30(a) requires collection of racial and national origin data in Department programs and activities. Comment by civil rights groups interpreted the recordkeeping requirement in the proposed rule as being circumscribed by the recordkeeping requirements of the Department program or activity under which assistance is granted. The language of § 107.30(a) has been clarified to mandate maintenance of race, and national origin data as is required by the Department. This revised language assures that the regulation incorporates all applicable Department recordkeeping requirements for racial and national origin data.

There was comment by several groups that recordkeeping provisions applicable to lenders (§ 107.30(b)) are duplicative of requirements imposed by Federal financial regulatory agencies. It is not the intent of this regulation to mandate duplicatory recordkeeping where records already kept by a lender pursuant to other regulations meet the requirements of this rule. Additionally, several commentors objected to the provision in this section that failure to comply with the recordkeeping requirements is *prima facie* evidence of discrimination.

Section 107.30 reflects the position of the Department that is has the authority to require the collection of data on the race and national origin of persons participating in programs and activities pursuant to its obligations regarding the administration and enforcement of its civil rights responsibilities. For example, in cases where the crucial issue is whether a disproportionate number of minorities have been denied housing or loans in violation of the Executive Order, the race and national origin records collected in connection with Department programs and activities will often be the only source of the statistical information needed to resolve the issue. Thus this Section was not intended to describe a new violation not provided in the Executive Order but rather to provide an appropriate evidentiary mechanism for assisting the Assistant Secretary for FH&EO in determining whether a violation has occurred. However, the language in the proposed rule stating that a failure to comply with recordkeeping requirements pursuant to this section shall be deemed *prima facie* evidence of a discriminatory practice is subject to misinterpretation and has, therefore, been deleted. Further, to clarify the relationship of the recordkeeping requirements to the other requirements of this regulation, the revised § 107.30(c) now indicates that where data required § 107.30 is rendered unavailable by a respondent's own violation of recordkeeping requirements, it is the obligation of that respondent to establish its compliance with this Part and with the equal housing opportunity requirements of the Executive Order.

Of course, under § 107.60 failure or refusal to comply with the Executive Order or the requirements of this Part is a proper basis for applying sanctions which include sanctions specified by the rules or regulations of the Department governing the program under which assistance is provided.

Question was raised as to what liability, if any, would fall on a purchaser of "third party paper" in the event mortgages purchased or accompanying documents failed to contain the information required in § 107.25. In general, in the event of technical violations, no liability would be imposed on such a purchaser. The Department is responsible for assuring that the originating mortgages complies with this recordkeeping requirement.

Question was raised about the interpretation of the term "national origin" and the possible difficulty in identifying such origin in some cases where the information is not volunteered by the applicant. It should be noted with regard to recordkeeping described in § 107.30(b) that the term encompasses the same six broad categories established by the Equal Credit Opportunity Act.

Overlapping Jurisdiction With Regulatory Agencies

Commenting regulatory agencies questioned the jurisdiction and need for this regulation with respect to coverage of financial institutions regulated by such agencies. These commentors pointed out that certain lenders are subject to regulations requiring compliance with the nondiscrimination in lending requirements of the Federal Fair Housing Act and the Equal Credit Opportunity Act.

The Department recognizes that many lenders to whom the proposed Nondiscrimination and Equal Opportunity in Housing Regulation would apply are already subject to regulatory requirements designed to assure that persons are not discriminated against on any prohibited basis covered by E.O. 11063. However, the Department has determined that the E.O. 11063 directive to Federal departments to take all actions necessary and appropriate to prevent discrimination in the lending practices of institutions with respect to assisted activities mandates the Department to continue to require compliance with the Executive Order by all institutions in their participation in the Department's activities. In this regard the regulation describes the processes the Department will utilize to review compliance by participants and to provide procedural due process in determining whether to impose sanctions provided in the Executive Order. The Department believes that compliance with the Executive Order and this regulation will not result in any significant burden on lenders desiring to participate in Department programs and activities. Additionally, the Department believes that this section is consistent with recordkeeping requirements imposed by Federal financial regulatory agencies, such as the Comptoller of the Currency and the Federal Home Loan Bank Board, pursuant to their regulatory authority and in furtherance of their responsibility to affirmatively further fair housing. Thus, the final regulation continues to require compliance by any financial institution with respect to their lending practices insofar as they relate to Department programs and activities.

However, in response to one comment, the sanctions provision of the regulation has been revised to provide notification to appropriate Federal financial regulatory agencies of findings of discrimination in order to permit those agencies to take prompt action consistent with their supervisory responsibilities.

In addition to the major areas of comment discussed above, numerous comments focused on specific provisions of the regulation:

§ 107.20(b) Prohibition Against Discrimination.

Comment by a regulatory agency proposed inclusion of guidelines, similar to guidelines proposed for enforcement of Regulation B, (pursuant to the Equal Credit Opportunity Act) to define affirmative action required to overcome the effects of prior discrimination. It is the intent of the Department to consider guidelines for incorporation in Title VIII regulations or in a separate regulation. In the judgment of the Department, it is not appropriate to incorporate detailed standards or guidelines defining affirmative action in this procedural regulation.

Also in response to comment by a regulatory agency, the word "recipient" in § 107.15(g) and 107.20(b) has been replaced by "person", to clearly indicate the applicability of the paragraph to all persons covered by the Executive Order.

§ 107.25 Provision in Legal Instruments.

In response to several comments, § 107.25 has been amended to provide that all legal instruments in which statements of compliance with E.O. 11063 are required must include reference to the sanction provided in § 107.60 of this rule.

Additionally, in response to another critique, the language of this section has been revised and clarified extensively.

§ 107.40 Compliance meeting.

Several comments proposed an extension of the respondent's response time to notices of compliance meetings from seven to thirty days. It should be noted that the compliance meeting process and the procedures to implement it are parallel to those incorporated in 24 CFR Part 108, Compliance Procedures for Affirmative Fair Housing Marketing. These identical procedures and timetables will make it possible, in instances where there are complaints or indications of violations of both this regulation and 24 CFR Part 108 to address these matters in one proceeding, thus avoiding a cumbersome dual enforcement process. The purpose of the enforcement procedures in these regulations, including the initial compliance meeting, is to establish a process which provides opportunity for speedy and informal resolution of matters previous to initiation of steps toward the imposition of sanctions. The compliance meeting procedure is the pivotal vehicle for such speedy and informal resolution. This forum is designed primarily to acquaint the respondent fully with the nature of the alleged violation cited in the notice and to provide an informal setting for early discussion of the matters at issue. It is the determination of the Assistant Secretary for FH&EO that these purposes of the compliance meeting can best be accomplished by maintaining the notification provisions of the regulation.

Against this background, it is the judgment of the Department that extension of the response period would be counterproductive to the speedy and informal resolution of matters which is the aim of compliance meetings. These comments have not been adopted.

§ 107.45 Resolution of Matters.

In response to comments by civil rights organizations, the provision in Section 302 of the Executive Order stipulating that informal resolution need not be pursued when similar efforts by other agencies have failed has been incorporated in § 107.45. Additionally, the role of the Assistant Secretary for FH&EO with respect to review of compliance with the terms of settlement agreements has been clarified and the Assistant Secretary's authority to take immediate action to impose sanctions in cases involving a failure to comply with such agreements has been made explicit.

§ 107.60 Sanctions and Penalties.

In response to comment by civil rights groups, the language referring to Departmental authority to impose sanctions provided in accordance with Department procedures relating to debarment, suspension, and ineligibility of contractors and grantees (24 CFR Part 24) in § 107.60(a) was revised to remove possible ambiguity about the applicability of this section.

Additionally, consistent with the provisions of the Executive Order, a new subsection (c) has been added to this section indicating that the Department shall use its good offices and take appropriate action, including the institution of litigation, "to promote the abandonment of discriminatory practices" with respect to residential property and related facilities provided with financial assistance previous to the effective date of the Executive Order.

One commentor suggested that an assurance be given that termination of approved lender status or of participation in GNMA mortgage purchase programs is the only appropriate sanction against lenders. This suggestion is not adopted. The Executive Order provides a full range of sanctions for violations of the Executive Order including referral to the Department of Justice for appropriate civil actions. Thus, the Department believes it would be inappropriate in this regulation to attempt to define all the remedies which are available in enforcement under the Executive Order.

A finding of no significant impact has been prepared in accordance with Department "Procedures for Protection and Enhancement of Environmental Quality." A copy of the Finding is available for inspection and copying in the Office of the Rules Docket Clerk,

Office of General Counsel, Room 5218, Department of HUD, 451 7th St., S.W., Washington, D.C. 20410. This regulation has been evaluated and has been found not to have major economic consequences for the general economy or for individual industries, geographic regions, or levels of government.

This rule is listed as item number FH&EO-3-78 in the Department's semiannual agenda of significant rules, published pursuant to Executive Order 12044.

Part 107 is added to 24 CFR as follows:

PART 107—NONDISCRIMINATION AND EQUAL OPPORTUNITY IN HOUSING UNDER EXECUTIVE ORDER 11063

Sec.

Authority. E.O. 11063, Equal Opportunity in Housing, issued November 20, 1962 (27 FR 11527); delegation of authority by the Secretary of Housing and Urban Development published in 34 FR 12253 (June 21, 1972).

§ 107.10 Purpose.

These regulations are to carry out the requirements of E.O. 11063 that all action necessary and appropriate be taken to prevent discrimination because of race, color, creed, or national origin in the sale, rental, leasing or other disposition of residential property and related facilities or in the use or occupancy thereof where such property or facilities are owned or operated by the Federal Government, or provided with Federal assistance by the Department of Housing and Urban Development and in the lending practices with respect to residential property and related facilities of lending institutions insofar as such practices relate to loans insured, guaranteed or purchased by the Department. These regulations are intended to assure compliance with the established policy of the United States that the benefits under programs and activities of the Department which provide financial assistance, directly or indirectly, for the provision, rehabilitation, or operation of housing and related facilities are made available without discrimination based on race, color, creed, or national origin. These regulations are also intended to assure compliance with the policy of this Department to administer its housing programs affirmatively, so as to achieve a condition in which individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, creed, or national origin.

§ 107.11 Relation to other authorities.

(a) Where allegations of discrimination on the grounds of race, color, or national origin are made in a program or activity of Federal financial assistance of the Department which does not involve a contract of insurance or guaranty, the provisions of Title VI of the Civil Rights Act of 1964 and regulations implementing Title VI, Nondiscrimination in Federally Assisted Programs, under Part 1 of this Title shall apply. Any complaint alleging discrimination on the basis of race, color, creed or national origin in a program or activity of the Department involving a contract of insurance or guaranty will be received and processed according to this Part.

(b) Where a complaint filed pursuant to this Part alleges a discriminatory housing practice which is also covered by Title VIII of the Civil Rights Act of 1968, the complainant shall be advised of the right to file a complaint pursuant to Section 810 of that Title and of the availability of Department procedures regarding fair housing complaints under Part 105 of this Title. The complainant shall also be advised of the right to initiate a civil action in court pursuant to Section 812 of the Civil Rights Act of 1968 without first filing a complaint with HUD.

§ 107.15 Definitions.

(a) "Department" means the Department of Housing and Urban Development.

(b) "Secretary" means the Secretary of Housing and Urban Development.

(c) "State" means each of the fifty states, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Marianas, and the territories of the United States.

(d) "Assistance" includes (1) grants, loans, contributions, and advances of Federal funds; (2) the grant or donation of Federal property and interests in property; (3) the sale, lease, and rental of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration or at a consideration which is reduced for the purpose of assisting the recipient or in recognition of the public interest to be served by such sale or lease to the recipient, when such order granting permission accompanies the sale, lease, or rental of Federal properties; (4) loans in whole or in part insured, guaranteed, or otherwise secured by the credit of the Federal Government; and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(e) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives or agents, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and public entities.

(f) "Public entity" means a government or governmental subdivision or agency.

(g) "Discriminatory practice" means: (1) Any discrimination on the basis of race, color, creed, or national origin or the existence or use of a policy or practice, or any arrangement, criterion or other method of administration which has the effect of denying equal housing opportunity or which substantially impairs the ability of persons to apply for or receive the benefits of assistance because of race, color, creed or national origin, in the sale, rental or other disposition of residential property or related facilities (including land to be developed for residential use), or in the use or occupancy thereof, where such property or related facilities are:

(i) Owned or operated by the Secretary;

(ii) Provided in whole or in part with the aid of loans, advances, grants, or contributions agreed to be made by the Department after November 20, 1962;

(iii) Provided in whole or in part by loans insured, guaranteed or otherwise secured by the credit of the Department after November 20, 1962; or

(iv) Provided by the development or the redevelopment of real property purchased, leased, or otherwise obtained from a State or local public agency or unit of general purpose local government receiving Federal financial assistance from the Department under a loan or grant contract entered into after November 20, 1962.

(2) Any discrimination on the basis of race, color, creed, or national origin or the existence or use of a policy, practice, or any arrangement, criterion or other method of administration which has the effect of denying equal housing opportunity or which substantially

impairs the ability of persons to apply for or receive the benefits of assistance because of race, color, creed or national origin in lending practices with respect to residential property and related facilities (including land to be developed for residential use) of lending institutions, insofar as such practices relate to loans, insured or guaranteed, by the Department after November 20, 1962. Examples of discriminatory practices under subsections (1) and (2) include but are not limited to the following when based on race, color, creed or national origin:

(i) Denial to a person of any housing accommodations, facilities, services, financial aid, financing or other benefit provided under a program or activity;

(ii) Providing any housing accommodations, facilities, services, financial aid, financing or other benefits to a person which are different, or are provided in a different manner, from those provided to others in a program or activity;

(iii) Subjecting a person to segregation or separate treatment in any matter related to the receipt of housing, accommodations, facilities, services, financial aid, financing or other benefits under a program or activity;

(iv) Restricting a person in any way in access to housing, accommodations, facilities, services, financial aid, financing or other benefits, or in the enjoyment of any advantage or privilege enjoyed by others in connection with such housing, accommodations, facilities, services, financial aid, or other benefits under a program or activity;

(v) Treating persons differently in determining whether they satisfy any occupancy, admission, enrollment, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any housing, accommodations, facilities, services, financial aid, financing or other benefits under a program or activity; and

(vi) Denying a person opportunity to participate in a program or activity through the provision of services or otherwise, or affording the person an opportunity to do so which is different from that afforded others in a program or activity.

(3) Noncompliance with relevant affirmative fair housing marketing requirements contained in Department programs and regulations.

(4) A formal finding of a violation of Title VIII of the Civil Rights Act of 1968 or a state or local fair housing law with respect to activities also covered by E.O. 11063.

§ 107.20 Prohibition against discriminatory practices.

(a) No person receiving assistance from or participating in any program or activity of the Department involving housing and related facilities shall engage in a discriminatory practice.

(b) Where such person has been found by the Department or any other Federal Department, agency, or court to have previously discriminated against persons on the ground of race, color, creed, or national origin, he or she must take affirmative action to overcome the effects of prior discrimination.

(c) Nothing in this Part precludes such person from taking affirmative action to prevent discrimination in housing or related facilities where the purpose of such action is to overcome prior discriminatory practice or usage or to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, creed or national origin.

§ 107.21 Prevention of discriminatory practices.

All persons receiving assistance from, or participating in any program or activity of the Department involving housing and related facilities shall take all action necessary and proper to prevent discrimination on the basis of race, color, creed, or national origin.

§ 107.25 Provisions in legal instruments.

(a) The following documents shall contain provisions or statements requiring compliance with E.O. 11063 and this Part:

(1) Contracts, grants and agreements providing Departmental assistance for the provision of housing and related facilities,

(2) Contracts, grants and agreements regarding the sale, rental or management of properties owned by the Secretary,

(3) Corporate charters and regulatory agreements relating to multifamily and land development projects assisted by the Department,

(4) Approvals of financial institutions and other lenders as approved FHA mortgagees,

(5) Requests for subdivision reports under home mortgage procedures and for preapplication analysis of multifamily and land development projects, and

(6) Contracts and agreements providing for Departmental insurance or guarantee of loans with respect to housing and related facilities.

(b) The provision or statement required pursuant to this section shall indicate that the failure or refusal to comply with the requirments of E.O. 11063 or this Part shall be a proper basis for the imposition of sanctions provided in § 107.60.

§ 107.30 Recordkeeping requirements.

(a) All persons receiving assistance through any program or activity of the Department involving the provision of housing and related facilities subject to E.O. 11063 shall maintain racial and national origin data required by the Department in connection with its programs and activities.

(b) All lenders participating in Departmental mortgage insurance programs, home improvement loan programs, GNMA mortgage purchase programs, or special mortgage assistance programs, shall maintain data regarding the race and national origin of each applicant and joint applicant for assistance with regard to residential property and related facilities. This data shall be noted in the following categories: American Indian/Alaskan Native, Asian/Pacific Islander, Black, White, Hispanic, Other (specify). If an applicant or joint applicant refuses to voluntarily provide the information or any part of it, that fact shall be noted and the information shall be obtained through observation. Applications shall be retained for a period of at least twenty-five (25) months following the date the record was made.

(c) If an investigation or compliance review under this Part reveals a failure to comply with any of the requirements of paragraph (a) or (b) of this section, the respondent shall have the burden of establishing its compliance with this Part and with the equal housing opportunity requirements of the Executive Order.

§ 107.35 Complaints.

(a) The Assistant Secretary for FH&EO, or designee, shall conduct such compliance reviews, investigations, inquiries, and informal meetings as may be necessary to effect compliance with this Part.

(b) Complaints under this Part may be filed by any person and must be filed within one year of date of the alleged act of discrimination unless the time for filing is extended by the Assistant Secretary for FH&EO. Complaints must be signed by the complainant and may be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, D.C., 20410, or any Regional or Area Office of the Department. All complaints shall be forwarded to the Director, Office of Regional Fair Housing and Equal Opportunity in the appropriate Regional

Office which has jurisdiction in the area in which the property is located.

(c) Upon receipt of a timely complaint, the Director of the Office of Regional FH&EO shall determine whether the complaint indicates a possible violation of the Executive Order or this Part. The Director of the Office of Regional FH&EO or a designee within a reasonable period of time shall conduct an investigation into the facts. The complainant shall be notified of the determination.

§ 107.40 Compliance meeting.

(a) Where preliminary analysis of a complaint, a compliance review initiated by the Assistant Secretary for FH&EO, or other information indicates a possible violation of E.O. 11063, or this Part, the person allegedly in violation ("respondent") shall be sent a Notice of Compliance Meeting and requested to attend a compliance meeting. The Notice shall advise the respondent of the matters to be addressed in the Compliance Meeting and the allegations contained in a complaint received pursuant to Sec. 107.35. The purpose of the compliance meeting is to provide the respondent with the opportunity to address matters raised and to remedy such possible violations speedily and informally, to identify possible remedies; and to effect a resolution as provided in § 107.45.

(b) The Notice of Compliance Meeting shall be sent to the last known address of the person allegedly in violation, by certified mail, or through personal service. The Notice will advise such person of the right to respond within seven (7) days to the matters and to submit information and relevant data evidencing compliance with E.O. 11063, the Affirmative Fair Housing Marketing Regulations, 24 CFR 200.600, the Fair Housing Poster Regulations, 24 CFR Part 110, the Advertising Guidelines for Fair Housing, 37 FR 6700, April 1, 1972, other affirmative marketing requirements applicable to the program or activity and any revisions thereto. Further, the person will be offered an opportunity to be present at the meeting in order to submit any other evidence showing such compliance. The date, place, and time of the scheduled meeting will be included in the Notice.

(c) Whenever a compliance meeting is scheduled as a result of a complaint, the complainant shall be sent a copy of the Notice of Compliance Meeting and shall be provided an opportunity to attend the meeting.

(d) The Area Office having jurisdiction over the program will prepare a report concerning the status of the respondent's participation in Department programs to be presented to the respondent at the meeting. The Area Manager shall be notified of the meeting and may attend the meeting.

(e) At the Compliance Meeting the respondent and the complainant may be represented by counsel and shall have a fair opportunity to present any matters relevant to the complaint.

(f) During and pursuant to the Compliance Meeting, the Director of the Office of Regional FH&EO shall consider all evidence relating to the alleged violation, including any action taken by the person allegedly in violation to comply with E.O. 11063.

(g) If the evidence shows no violation of the Executive Order or this Part, the Director of the Office of Regional FH&EO shall so notify the person(s) involved within ten (10) days of the meeting. A copy of this notification shall be sent to the complainant, if any, and shall be submitted to the Assistant Secretary for FH&EO.

(h) If the evidence indicates an apparent failure to comply with the Executive Order or this Part, and the matter cannot be resolved informally pursuant to § 107.45, the Director of the Office of Regional FH&EO shall so notify the respondent and the complainant, if any, no later than ten (10) days after the date on which the compliance meeting is held, in writing by certified mail, return receipt requested, and shall advise the complainant, if any, and the respondent whether the Department will conduct a compliance review pursuant to § 107.50 or, where appropriate, refer the matter to the Assistant Secretary for FH&EO for possible imposition of sanctions. A copy of this notification shall be submitted to the Assistant Secretary for FH&EO. The compliance review shall be conducted to determine whether the respondent has complied with the provisions of E.O. 11063, Title VIII of the Civil Rights Act of 1968, Department regulations and the Department's Affirmative Fair Housing Marketing requirements.

(i) If the respondent fails to attend a compliance meeting scheduled pursuant to this section, the Director of the Office of Regional FH&EO shall notify the respondent no later than ten (10) days after the date of the scheduled meeting, in writing by certified mail, return receipt requested, as to whether the Department will conduct a compliance review or, where appropriate, refer the matter to the Assistant Secretary for FH&EO for possible imposition of sanctions. A copy of this notification shall be submitted to the Assistant Secretary for FH&EO and sent to the complainant, if any.

§ 107.45 Resolution of matters.

(a) Attempts to resolve and remedy matters found in a complaint investigation or a compliance review shall be made through the methods of conference, conciliation, and persuasion.

(b) Resolution of matters pursuant to this section and § 107.40 need not be attempted where similar efforts by another Federal agency have been unsuccessful in ending and remedying the violation found with respect to the same respondent.

(c) Efforts to remedy matters shall be directed toward achieving a just resolution of the probable violation and obtaining assurance(s) that the respondent will satisfactorily remedy any violation of E.O. 11063 and will take actions to eliminate the discriminatory practices and prevent reoccurrences. Compensation to individuals from the respondent may also be considered.

(d) The terms of settlements shall be reduced to a written agreement, signed by the respondent and the Assistant Secretary for FH&EO or a designee. Such settlements shall seek to protect the interests of the complainant, if any, other persons similarly affected, and the public interest. A written notice of the disposition of matters pursuant to this section and of the terms of settlements shall be given to the Area Manager by the Assistant Secretary for FH&EO or a designee and to the complainant, if any. When the Assistant Secretary or a designee determines that there has been a violation of a settlement agreement, the Assistant Secretary immediately may take action to impose sanctions provided under this Part, including the referral of the matter to the Attorney General for appropriate action.

§ 107.50 Compliance reviews.

(a) Compliance reviews shall be conducted by the Director of the Office of Regional FH&EO or a designee. Complaints alleging a violation(s) of this Part or information ascertained in the absence of a complaint indicating apparent failure to comply with this Part shall be referred immediately to the Director of the Office of Regional FH&EO. The Regional Director of the Office having jurisdiction over the programs involved and the Area Manager shall be notified of all alleged violations of the regulations. A complaint is not a prerequisite for the initiation of compliance review.

(b) The purpose of a compliance review is to determine whether the respondent is in compliance with the Executive Order and this Part. Where allegations may also indicate a violation of the provisions of Title VIII of the Civil

Rights Act of 1968, HUD regulations issued thereunder and Affirmative Fair Housing Marketing requirements, a review may be undertaken to determine compliance with those requirements. The respondent shall be given at least five (5) days notice of the time set for any compliance review and the place or places for such review. The complainant shall also be notified of the compliance review.

§ 107.51 Findings of Noncompliance.

(a) A finding of noncompliance shall be made when the facts disclosed during an investigation or compliance review, or other information, indicate a failure to comply with the provisions of E.O. 11063 or this Part. In no event will a finding of noncompliance precede the completion of the compliance meeting procedures set forth in § 107.40.

(b) Determinations of noncompliance with E.O. 11063 shall be made in any case in which the facts establish the existence of a discriminatory practice under § 107.15(g)

(c) The existence or use of a policy or practice, or any arrangement, criterion or other method of administration which has the effect of denying equal housing opportunity or which substantially impairs the ability of persons, because of race, color, creed or national origin, to apply for or receive the benefits of assistance shall be a basis for finding a discriminatory practice unless the respondent can establish that:

(1) The policy or practice is designed to serve a legitimate business necessity or governmental purpose of the respondent;

(2) The policy or practice effectively carries out the interest it is designed to serve; and

(3) No alternative course of action could be adopted that would enable respondent's interest to be served with a less discriminatory impact.

§ 107.55 Compliance report.

(a) Following completion of efforts under this Part, the Director of the Office of Regional FH&EO or a designee shall prepare a compliance report promptly and the Assistant Secretary for FH&EO shall make a finding of compliance or noncompliance. If it is found that the respondent is in compliance, all persons concerned shall be notified of the finding. Where a finding of noncompliance is made, the report shall specify the violations found. The Director of the Office of Regional FH&EO shall send a copy of the report to the respondent by certified mail, return receipt requested, together with a Notice that the matter will be forwarded to the Assistant Secretary for FH&EO for a determination as to whether actions will be initiated for the imposition of sanctions. The Regional Director of the Office having jurisdiction over the programs involved and the Area Manager shall also receive a copy of the report and the notice of intention to refer the matter to the Assistant Secretary for FH&EO.

(b) The Notice will provide that the respondent shall have seven (7) days to respond to the violations found and resolve and remedy matters in the compliance report. At the expiration of the seven (7) day period the matter shall be referred to the Assistant Secretary for FH&EO.

(c) The complainant shall be sent a copy of the findings and compliance report and shall have seven (7) days to comment thereon.

§ 107.60 Sanctions and penalties.

(a) Failure or refusal to comply with E.O. 11063 or the requirements of this Part shall be proper basis for applying sanctions. Violations of Title VIII of the Civil Rights Act of 1968 or a state or local fair housing law, with respect to activities covered by the Executive Order, or of the regulations and requirements under E.O. 11063 of other Federal Departments and agencies may also result in the imposition of sanctions by this Department.

(b) Such sanctions as are specified by E.O. 11063, the contract through which Federal assistance is provided, and such sanctions as are specified by the rules or regulations of the Department governing the program under which Federal assistance to the project is provided, shall be applied in accordance with the relevant regulations. Actions which may be taken include: cancellation or termination, in whole or in part of the contract or agreement; refusal to approve a lender or withdrawal of approval; a determination of ineligibility, suspension or debarment from any further assistance or contracts provided, however, that sanctions of debarment, suspension and ineligibility are subject to the Department's regulations under Part 24 of this Title; and provided further, that no sanction under Section 302 (a), (b) and (c) of E.O. 11063 shall be applied by the Assistant Secretary for FH&EO without the concurrence of the Secretary.

(c) The Department shall use its good offices in order to promote the abandonment of discriminatory practices with regard to residential property and related facilities provided with assistance prior to the effective date of E.O. 11063 and take appropriate actions permitted by law including the institution of appropriate litigation to provide such equal housing opportunities.

(d) In any case involving the failure of a lender to comply with the requirements of the Executive Order or this Part, the Assistant Secretary for FH&EO shall notify the Federal financial regulatory agency having jurisdiction over the lender of the findings in the case.

§ 107.65 Referral to the Attorney General.

If the results of a complaint investigation or a compliance review demonstrate that any person, or specified class of persons, has violated E.O. 11063 or this Part, and efforts to resolve the matter(s) by informal means have failed, the Assistant Secretary for FH&EO in appropriate cases shall recommend that the General Counsel refer the case to the Attorney General of the United States for appropriate civil or criminal action under Section 303 of E.O. 11063.

Issued at Washington, D.C., September 4, 1980.

Sterling Tucker,

Assistant Secretary for Fair Housing and Equal Opportunity.

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Part VI

Federal Emergency Management Agency

Floodplain Management and Protection of Wetlands Regulations and Finding of No Significant Impact on the Environment

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 9

[Docket No. FEMA Gen-9]

Floodplain Management and Protection of Wetlands

AGENCY: Federal Emergency Management Agency.

ACTION: Final regulations.

SUMMARY: These regulations implement Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands. Since its formation, the Federal Emergency Management Agency (FEMA) has been complying with these two Executive Orders. However, these regulations apply specific procedures and criteria to FEMA for the Agency's actions in or affecting floodplains and wetlands.

DATE: These regulations are effective September 9, 1980.

FOR FURTHER INFORMATION CONTACT: John Scheibel, Assistant to the General Counsel for Environmental Quality and Hazard Mitigation, Federal Emergency Management Agency, 1725 Eye Street NW., Washington, DC 20472. Telephone: (202) 634-1990.

SUPPLEMENTARY INFORMATION: On May 24, 1977, Executive Order 11988 was issued for the following purposes:

(a) To avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains; and

(b) To avoid direct or indirect support of floodplain development wherever there is a practicable alternative. This Executive Order applies to federal agencies for all actions involving:

(1) Acquiring, managing and disposing of federal land and facilities;

(2) Providing federally undertaken, financed or assisted construction and improvements; and

(3) Conducting federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. The United States Water Resources Council (WRC) published guidelines for implementing E.O. 11988 in the Federal Register on February 10, 1978 (43 FR 6030). These regulations follow closely the WRC Guidelines in setting forth policy and procedures for floodplain management relating to disaster planning, response and recovery and hazard mitigation for all actions taken by FEMA. The main emphasis of these regulations is on compliance with Executive Order 11988, Floodplain Management. However, in cases where Executive Order 11990, Protection of Wetlands, would apply, these regulations also set forth policy and procedures to implement that Executive Order.

FEMA recognizes floodplains and wetlands as unique and vital natural resources. Both ecological systems possess many natural values and carry on numerous functions that are of great benefit to all of us. Because wetlands frequently lie within floodplains, they constitute a natural and beneficial value of floodplains. Thus, where a wetland is in a floodplain, the more restrictive terms of Executive Order 11988 apply.

On June 13, 1979, the Federal Disaster Assistance Administration (DHUD) published a proposed rule in the Federal Register (44 FR 34048-34058) implementing Executive Order 11988 and Executive Order 11990. The present regulation applies to the Office of Disaster Response and Recovery (formerly the Federal Disaster Assistance Administration) as well as the other elements of FEMA.

On December 27, 1979, FEMA published interim regulations in the Federal Register (44 FR 76510-76523) implementing the two Executive Orders. These regulations took effect on January 28, 1980. Comments were due on or before February 28, 1980, but were accepted after that date.

The Supplementary Information section of the interim regulations includes an explanation of some of the basic provisions of the regulations and the 8-step decision-making process. Except where changes have been made in the interim regulations, we refer you to its Supplementary Information section for additional background.

We now address the comments received on the interim regulations. About 40 comments were received from outside of the Agency. Many comments addressed the same issues, with about half the comments falling on one side of the issue and half on the other side. The comments are categorized based on the section of the regulations to which they pertain. At the end of each section is a discussion of the changes made to that section. The comments which are general in nature are addressed first.

General Comments

We received several comments to the effect that the regulations are burdensome and will delay the disaster relief effort. We have made every attempt to streamline the decision-making process. We have made adjustments and clarifications to §§ 9.7 Determination of proposed action's location (Step 1), 9.8 Public notice requirement (Step 2), 9.10 Identify impacts of proposed action (Step 4) and 9.12 Final public notice (Step 7) to facilitate the process. We believe that these changes have resulted in a process which will allow disaster relief to continue to be provided in a timely and effective fashion while the concepts of hazard mitigation, floodplain management and protection of wetlands are conscientiously applied. Nevertheless implementation of the regulations will require increased time and effort. However, FEMA has a firm commitment to minimize harm to and within floodplains and wetlands. In light of this commitment, the Agency has determined that it will expend the time and effort necessary to effectively implement Executive Orders 11988 and 11990.

Some comments expressed the view that FEMA should apply the regulations to its traditional role as Federal coordinator in the post-disaster situation. While FEMA does have statutory authority to appoint a coordinator, that official is not statutorily authorized to direct the actions of other agencies in a post-disaster situation. However, pursuant to Executive Order 12148, FEMA is authorized to establish Federal mitigation policy after a disaster or emergency. FEMA, in this role, and the Federal Coordinating Officer intend to encourage other agencies to act consistently with FEMA in its compliance with Executive Order 11988 and Executive Order 11990.

A few commentators stated that the regulations should be more specific in addressing FEMA's programs. We do believe that there is a degree of specificity, especially where it is critical, in § 9.11, Mitigation. However, these are Agency-wide regulations and are intended to establish performance standards with which the subunits of FEMA must comply. We thought it was important to allow the subunits the flexibility to achieve compliance with the procedural and substantive performance requirements in their own way. As is stated in § 9.18(b), the Associate Directors shall identify the programmatic changes necessary to comply with the regulations.

A couple of comments were received suggesting that FEMA ensure that the necessary floodplain management measures have, in fact, been implemented. This is provided for in § 9.6(b), Step 8, which requires FEMA to—

- Review the implementation and post-implementation phases of the proposed action to ensure that the requirements stated in § 9.11 are fully implemented. Oversight

responsibility shall be integrated into existing processes.

It is expected that the subunits will identify how they intend to monitor field implementation of their mitigation actions. This will be done in the report required under section 9.18.

One comment suggested that a process be established whereby State and local governments could be certified by FEMA to implement the two Executive Orders and the regulations. Even if FEMA wanted to establish such a process, such a delegation would be improper. There is only one delegation permitted under Executive Order 11988 (section 9) and under Executive Order 11990 (section 10). No other delegations are authorized. Moreover, FEMA would consider such a delegation to be shirking its hazard mitigation responsibilities.

§ 9.4 Definitions

Actions Affecting or Affected by Floodplains or Wetlands was changed to include all impacts and not just adverse impacts.

Critical Action was changed to clarify that the list of actions was a representative but not an exclusive list of what actions are to be considered critical.

Direct Impacts was amended to include changes in the risk to lives and property.

Emergency Actions added the citation of the complete definition in the regulations of the Office of Disaster Response and Recovery.

Environmental Document was omitted because it is not used in the regulation.

Floodplain was clarified to exclude areas subject only to mudflow until FIA adopts maps identifying "M" Zones. This was done due to mapping problems and the lack of knowledge regarding hazard mitigation for mudflow.

Indirect Impacts was amended to include impacts on the risk to lives and property.

Natural Values of Floodplains and Wetlands was expanded to include archeological and historic sites. This was in direct response to several comments.

New Construction was changed to include the placement of a mobile home. The term "replacement" rather than "reconstruction" is now used relating to a structure or facility which has been totally destroyed. By "totally destroyed", we mean destroyed for all practical purposes.

Regional Director was changed to mean the Disaster Recovery Manager (DRM) when one is designated, as the DRM will be in charge of FEMA operations in a post-disaster situation.

Substantial Improvement was changed in several ways. It now includes any repair, reconstruction or other improvement of a structure or facility which has been damaged in excess of 50%. FEMA found that repairs were being made incrementally and thus floodplain management standards were not being applied to structures and facilities that had been damaged 50% or more. The definition was also changed to include damages equalling 50% and not necessarily exceeding 50%. The value of all public facilities is now to be based on replacement cost. Where a facility is an essential link in a larger system, the percentage of damage will be based on the relative cost of repairing the damaged facility to the replacement cost of the portion of the system which is operationally dependent on the facility. Without this change, the "system" which forms the basis of the value assessment could be the entire U.S. highway system. The intent of the change is to establish a performance criterion—how much of the remaining investment in a damaged facility would be lost if the damaged portion were not rebuilt. Lastly, the definition was amended to exclude any alteration of a structure or facility listed in the National Register of Historic Places or a State Inventory of Historic Places.

There were a few suggested changes to definitions that were not made.

It was suggested that the definition of *wetlands* be amended to be consistent with the definition used by the Army Corps of Engineers. We decided not to change our definition as it is consistent with the one used by the U.S. Fish and Wildlife Service (FWS). We prefer this definition since the FWS is responsible for mapping wetlands nationally, and it is a more inclusive definition.

One commentator suggested that *functionally dependent use* be expanded to cover public facilities, serving health, safety, and welfare, such as transportation, flood control and drainage systems. Flood control and drainage systems will often be considered functionally dependent uses under the present definition. With the exception of some bridges, roads should not be considered a functionally dependent use. They do not, in fact, have to be in close proximity to water in order to function.

§ 9.5 Scope

There were several general comments which advocated either increasing or decreasing the scope of the regulations. Some commentators stated that the regulations covered too broad a spectrum of FEMA actions. One recommended excluding all emergency work, functionally dependent uses, and utility projects. Emergency work necessary to save lives and protect property (under sections 305 and 306 of the Disaster Relief Act of 1974) is already excluded. While the floodplain/wetland may be the only practicable location for many utility projects, and for functionally dependent uses, these projects have the potential to impact on or be affected by floodplains and wetlands. Thus, analysis of such actions is necessary to determine whether there are alternative sites (in some cases), alternative actions, and whether no action is appropriate, and to determine what mitigation is necessary.

On the other hand, quite a number of comments were received to the effect that the exceptions were too broad, that FEMA had excluded from all or part of the decision-making process many actions which will impact on, or be affected by, their location in floodplains or wetlands. One comment opposed § 9.5(d) altogether, stating that if non-floodplain locations were not practicable for these actions, then such locations will fall out of the analysis quickly. We have taken a careful look at each of these actions and determined on a categorical basis, that there is no practicable alternative site for them. However, the alternative action and the no action options must still be analyzed.

More specifically, one comment took issue with § 9.5(d)(3) (now § 9.5(d)(2)), stating that new and substantially improved facilities funded as small projects (under § 419 of the Disaster Relief Act of 1974) should be treated alike, and alternative sites should be examined for both. There is a $25,000 ceiling per community on small projects. Typically, several projects will receive part of the $25,000. Data from five of the Federal regions for July, 1977 to May, 1978 show the average project to cost about $3,000. About 70% of the funds went to roads and bridges, water control facilities and utilities. Due to the nature of such facilities, there will probably be relatively few substantial improvements. These uses are generally either functionally dependent uses or other uses for which no practicable alternative site is available. Further, it is the intent of section 419 of the Disaster Relief Act of 1974 (Pub. L. 93-288) to give the local government flexibility in the use of funds without the onus of elaborate recordkeeping and detailed audit. Based on the limited amount of money included in each project, the very limited opportunities for alternative siting and the legislative intent to reduce red tape, there is no practicable

alternative site outside the floodplain or wetland for small projects other than new structures or facilities. We have maintained the distinction between new and substantially improved facilities funded as small projects under § 419.

One commentator opposed the criterion that eliminates the analysis of alternative sites for public facilities unless the FEMA estimated cost of repairs is more than 50% of the estimated reconstruction cost of the entire facility or structure, or is more than $100,000. The suggestion was to impose a $10,000 threshold instead. Under the criteria of the interim rule, if a public facility is damaged less than $100,000 but more than 50% of its reconstruction cost, alternative sites would have to be examined. However, if the remaining investment is greater than 50%, and if the reconstruction cost is less than $100,000, then FEMA does not believe that an alternative site is practicable. However, FEMA still must determine if the floodplain site is itself practicable and if there are alternative actions which would accomplish substantially the same objectives but with less of a flood risk potential. Because of these requirements, the $100,000/50% criterion is considered more appropriate than a $10,000 threshold.

One commentator suggested that even if alternative sites are not addressed, that FEMA should still perform Step 7, Final public notice, and inform the public as to why the floodplain or wetland is the only practicable alternative. Since the focus of final public notice is explaining why the action could not be located outside of a floodplain or wetland, FEMA deemed it unnecessary to apply this step to actions for which alternative sites are categorically not practicable.

One comment suggested that each specific FEMA action covered by the regulations should be cited in the scope section. We felt that it was more effective to state:

> These regulations apply to all Agency actions which have the potential to affect floodplains or wetlands or their occupants or which are subject to potential harm by location in floodplains or wetlands.

Some comments stated that FEMA should take affirmative steps to foster the goals of floodplain management and wetlands protection. It is anticipated that FIA will review the criteria of the National Flood Insurance Program and that the Office of Disaster Response and Recovery will review its section 406 Hazard Mitigation regulations in light of the policies established by these regulations. In addition, FIA is now implementing section 1362 of the National Flood Insurance Act of 1968, as amended, entailing acquisition of flood damaged properties and replacement with open space.

A few comments asserted that the regulations should address actions which individually or cumulatively could impact on floodplains or wetlands. Section 9.5(a)(2) was changed to read:

> The basic test of the potential of an action to affect floodplains or wetlands is the action's potential (both by itself and when viewed cumulatively with other proposed actions) to result in the long or short term impacts associated with: * * *

One commentator recommended that the repair of roadways and culverts be exempted from the entire 8 step process. The rationale was that any analysis should have been done at the time the road or culvert was initially constructed. FEMA believes that in the post-disaster situation the Agency is in a position to correct past mistakes. Even if there may be only a limited opportunity to avoid the floodplain, there may still be significant possibilities for minimization of harm to and within the floodplain.

Another comment suggested that flood control facilities should be exempted from the decision-making process. If such facilities are to be built at all, they are typically built in floodplains. However, nonstructural floodplain management and "no action" present alternatives to flood control works. Further, flood control works often should not be built if they would engender a false sense of security and the new development which will result. When they are built, these facilities must be constructed safely and in a manner which minimizes harm to the environment.

Four changes in § 9.5 should be noted. Section 9.5(a)(3)(i) provides that where an action was begun as of May 24, 1977, the effective date of the Orders, and is not complete as of the effective date of these regulations, that FEMA must determine if the action has progressed beyond critical stages in the decision-making process. The regulation now adds that this determination need only be made at the time that followup actions are being taken to complete or implement the action in question. This provision was added so FEMA would not have to go through all of its files to determine the status of each, when no FEMA action is called for.

The scope section applicable to debris removal has also been changed. It had been included in § 9.5(d), and applied to

> Debris removal (sec. 403); except those grants involving non-emergency disposal of debris within the floodplain or non-emergency removal of debris from the floodways.

The scope provision applicable to debris removal is now in § 9.5(c) and exempts debris removal from the 8-step process, as follows:

> Debris removal (sec. 403), except those grants involving non-emergency disposal of debris within a floodplain or wetland.

Minimal home repairs was moved from the § 9.13 Review for temporary housing to § 9.5(c) where it is totally exempt from the 8-step process. Minimal home repair under section 404(c) of the Disaster Relief Act of 1974 is quite similar to limited home repair which had already been excluded from the 8-step process in the interim regulations. The two programs are intended to provide assistance in repairing minimally damaged homes to a habitable condition. In neither program does the assistance provided approach the $3,750 ceiling on limited home repairs. Minimal home repair is rarely used; to the extent that it is employed, the average grant is estimated to be about $600–$700. This is also the average for limited home repair. FEMA has determined that such actions do not have the potential to affect floodplains or wetlands or their occupants, or to be subject to potential harm by location in floodplains or wetlands.

Also added to the list of exempt actions are repairs of less than $5,000 performed under section 402 (of the Disaster Relief Act) to damaged structures or facilities. However, actions in a floodway or coastal high hazard area, and new or substantially improved structures or facilities are not subject to the exemption. Based in part on our experience in applying the interim regulation to the southern California disaster of January, 1980, it became clear that public assistance actions costing less than $5,000 offered little, if any, opportunity for hazard mitigation, particularly where the action was not a new or substantially improved structure or facility, and when it was not located in a floodway or coastal high hazard area. Where those opportunities do arise, even for actions below $5,000, FEMA will take advantage of them. In a fairly large disaster, such as southern California, when the Agency is confronted with about 8,000 actions in a short period of time, we see the need to devote our resources in the area of floodplain management where they will be most effective. At the same time, we do not want to overlook actions which have the potential for flood damage, either to themselves or to others. We believe that by drawing the line at $5,000, and limiting the exception to

actions which do not constitute new or substantially improved structures and facilities, and those outside of high hazard areas, that FEMA has struck an appropriate balance. In the interim regulation, we had already exempted most individual and family grant actions, which could amount to $3,750 per structure. Where an action has been exempted, but the Regional Director sees the need to apply the 8-step process, this analysis shall be performed.

Clarification of the application of both the Executive Orders to the National Flood Insurance Program (NFIP) was necessary. The two Executive Orders do apply to the administration of the NFIP as do these regulations.

The practical question has been raised of how the 8-step decision-making process is to be applied to FIA's issuance of insurance policies, the terms of the policy, its floodplain management criteria applicable to local communities and its insurance rates. For instance, must the 8-step process be carried out every time FIA issues an insurance policy or admits a community into the program? The "action" to which the 8-step process must be applied under the regulations is the *establishment* of programmatic criteria, not the *application* of programmatic criteria to individual situations. Thus for example, FIA would apply the 8-step process to a programmatic determination of categories of structures to be insured, but would not be expected to apply an 8-step review to a determination of whether to insure each individual structure. The substantive concepts of (1) avoidance of the floodplain if a practicable alternative exists (steps 3 and 6), and (2) minimizaton of harm to and within the floodplain (step 5) are to be applied on an overall programmatic basis. Early (step 2) and final (step 7) notices can be given by publication of proposed and final regulations or other notices in the Federal Register much along the lines of current publication actions. The assessment of impacts (steps 4) can be accomplished by an environmental assessment or an environmental impact statement, as appropriate.

Also, FIA will review its floodplain management criteria, its insurance rates, its mapping procedures, the terms of the Standard Flood Insurance Policy, the conditions of insurability and where insurance is to be made available in light of the 8-step process. FIA will provide the Director with a written report by December 1, 1980, indicating the results of its review and any appropriate changes.

Because most of what FIA does in administering the NFIP is performed on a program wide basis, and FIA is thus applying the 8-step process programmatically, § 9.5(f) (a new subsection) provides for types of actions for which applications of the 8-step process is not required on an action by action basis. This exemption emphasizes the importance of FIA's programmatic analysis. In particular, FIA will apply the following concepts to its program wide review of the NFIP (1) avoidance of floodplains and wetlands unless no practicable alternative exists, and (2) minimization of harm to and within floodplains and wetlands.

Further, the Office of General Counsel has determined that FIA has the authority to restrict the availability of flood insurance, even in communities participating in the NFIP. As is discussed below, changes were made in §§ 9.9(e)(6) and 9.11(e)(4) in which FIA is exercising this authority.

§ 9.6 *Decision-making Process*

No outside comments were received on this section but one change was made. At the end of § 9.6(a), the following is added:

> The numbering of Steps 1 through 8 does not firmly require that the steps be followed sequentially. As information is gathered throughout the decision-making process, and as additional information is needed, re-evaluation of lower numbered steps may be necessary.

For example, if the information initially gathered under Step 1 turns out to be inadequate for compliance with Step 5, FEMA will return to Step 1 and augment its data base.

§ 9.7 *Determination of Proposed Action's Location*

One comment suggested the addition of groundwater flooding as an additional flooding characteristic to be identified by FEMA as appropriate. This was done by amending § 9.7(a)(2)(v)(I).

One comment suggested that FEMA be required to consult with the State wetland agency in every case. At present, FEMA must consult with the State wetland agency only if the U.S. Fish and Wildlife Service does not have the necessary information. If the U.S. Fish and Wildlife has the necessary data, no further investigation is warranted.

There were two contrary comments, one stating that too much information was required and the other stating that not enough information was required under Step 1. The key to Step 1 is the performance standard for FEMA to obtain sufficient information to enable it to comply with the Orders' requirements to (1) avoid floodplain and wetland locations unless they are the only practicable alternatives, and (2) minimize harm to and within floodplains and wetlands. In the case of a replacement structure, this may entail a great deal of information regarding flood elevations and specific hazards. In the case of reparing a 10 yard segment of a road that has been washed away, very little information may be necessary. In the case of replacement of a bridge, it may entail stream-cross-sections. Whatever it takes to know if the floodplain location is or is not practicable, and what it will take to minimize the hazard and harm to the environment is the amount of information that FEMA must collect.

Aside from these changes, the only other alterations to § 9.7 were organizational in nature—in the interest of clarity.

§ 9.8 *Public Notice Requirements*

There were no outside comments received on this section. Several changes were made, however.

Section 9.8(a) was amended to indicate that public notice would be given for any proposed action "in or affecting floodplains or wetlands."

Sections 9.8(c)(3) and 9.8(c)(7) were altered to indicate that cumulative notice may be permitted and to set out the factors upon which its appropriateness must be determined.

Section 9.8(c)(5)(ii) was changed to indicate that instead of publication of a map of the area, FEMA may state that such map is available for public inspection and provide the telephone number and address at which the map may be inspected.

§ 9.9. *Analysis and Re-Evaluation of Practicable Alternatives*

One outside comment was received on this section. It stated that FEMA should emphasize the presumption against floodplain development built into the "practicability" requirement of the Orders. We agree with the comment and believe that this concept is already emphasized. In section 9.9(e), FEMA is not allowed to act in a floodplain unless the importance of the floodplan site "clearly outweighs" the objectives of E.O. 11988, with "great weight" in this balancing process being given to the objectives of the Order. However, at the suggestion of this commenter, § 9.8(a)(1) was changed to require the avoidance of floodplains and wetlands "unless there is no practicable alternative" rather than "wherever practicable."

There were a couple of other substantive changes made. Section 9.9(b) was amended to delete the

preface: "Upon completion of determination of Steps 1 and 2 . . ." This was deleted to be consistent with the new provision for the reordering of steps in § 9.6. Also, in § 9.6, "at a minimum" at the end of the paragraph was deleted because alternative sites, alternative actions and no action are the only alternatives which FEMA must consider.

Section 9.9(e) was clarified by adding:

Upon determination of *the impact of the proposed action to or within the floodplain or wetland and of* what measures are necessary to comply with the requirement to minimize harm to and within floodplains and wetlands (§ 9.11) FEMA shall: * * *

A new § 9.9(e)(6) was added:

In any case in which the Regional Director has selected the "no action" option, FIA may not provide a new or renewed contract of flood insurance for that structure.

It would be inconsistent for FEMA to deny disaster assistance for a structure and then provide flood insurance on the same structure. Whatever the factors which justify selecting the "no action" option for disaster assistance under § 9.9(e)(5) will also provide the same justification for denying flood insurance. Of course, an existing policy of flood insurance will run to the end of the policy year.

§ 9.10 Identify Impacts of Proposed Actions

No outside comments were received on this section. Two changes were made, however, both to § 9.10(b). The Agency is required to identify the potential direct and indirect adverse impacts instead of the "full range of" all such impacts. This language was deleted because it added nothing to the sentence. At the end of § 9.10(b), a provision was added parallel to that of § 9.7 which makes clear that FEMA must collect enough information to enable it to comply with the Orders' requirements to avoid floodplain and wetland locations unless they are the only practicable alternatives and to minimize harm to and within floodplains and wetlands.

§ 9.11 Mitigation

Quite a number of comments were received on this section and several changes were made.

Several comments expressed the view that new and substantially improved structures should be elevated above the 100-year level by one or two feet. Over the last decade, the 100-year level has come to be accepted as the standard to which new construction must be built. Some standards have been lower (Federal Housing Administration) and some have been higher (Corps of Engineers' Standard Project Flood). However, the 100-year level has been accepted as the nationwide standard for new construction under the National Flood Insurance Program and E.O. 11988. We do not see sufficient basis to alter this now commonly accepted standard. There is one exception. For critical actions, those for which even a slight chance of flooding would be too great, FEMA will apply the 500-year standard.

One comment stated that the only mitigation provision which FEMA applies to bridges is the floodway encroachment standard. While this may be the only specific standard, if a bridge is to be repaired or replaced, harm to and within the floodplain must be minimized. Thus, if in order to minimize such harm, a bridge must be enlarged or otherwise redesigned, this is what FEMA will do. Even before reaching that point, FEMA must determine if the alternative action and no action alternatives are appropriate or if the floodplain is itself a practicable location. FEMA does intend to address minimization standards for specific actions in handbook form.

One comment stated that no FEMA funds in floodplains should be approved unless flood insurance is purchased. Any such requirement is based on the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and is set out in other Agency regulations. It is not appropriate for these regulations.

One comment suggested that there should be no provision for variances from FEMA's minimization standards. With two exceptions, there are no variances allowed. Where FIA has granted an exception, or the community has granted a variance which FEMA determines is consistent with 44 CFR 60.6(a), then a variance from the elevation requirements (§ 9.11(d)(3)) is allowable. Where a Flood Insurance Rate Map is not in effect (and thus there are probably no local elevation requirements), FEMA may approve a variance from the elevation requirements (§ 9.11(d)(3)) after compliance with the standards of 44 CFR § 60.6(a). The latter provision represents a change from the interim rule to alleviate potential inequities in emergency program communities. We believe that the standards of 44 CFR § 60.6 will relieve such inequities in the flood fringe without allowing the exception to become the rule. Further, no variances are allowable from the standards applicable to coastal high hazard areas and floodways.

One comment suggested that the regulations should not distinguish between floodways and coastal high hazard areas regarding substantial improvements; that substantial improvements should be prohibited in coastal high hazard areas and not just in floodways. We do find that distinction appropriate in light of the encroachment factor in floodways which is not present in coastal high hazard areas. Since a structure or facility in a floodway can aggravate the flood hazard for others by increasing flood heights upstream and downstream, it is justifiable to treat structures and facilities in floodways differently than those in coastal high hazard areas.

It was also suggested that while functionally dependent uses and actions which facilitate open space uses are excluded from the floodway and coastal high hazard area prohibitions, that the rest of the regulation still applies to such actions. We agree and this is made clear in § 9.11(d)(5) which emphasizes the "practicability" and "minimization" standards. This concept is re-emphasized by new language at the beginning of § 9.11(d).

One comment asserted that a zero rise floodway rather than a 1 foot rise floodway should be used. This was not done for a couple of reasons. First, this was one area where consistency with the National Flood Insurance Program was important. Second, the Water Resources Council's guidelines use the regulatory (one foot rise) floodway. On a similar subject, we recognize that in a post-disaster situation, regardless of the encroachment standard used, such standard will not preclude repair of structures that were already in the floodway as the flood heights used are those which existed prior to and not after the disaster. However, if FEMA has an opportunity to reduce flood heights, it may well be required to do so under the "minimization" standard.

A couple of comments were to the effect that the sections regarding the restoration and preservation of natural and beneficial floodplain values should be set out in greater detail. The Agency believes that its use of performance standards is appropriate. It is also quite difficult to establish specific standards in this area. To the extent that anyone has specific suggestions as to how this has, or could be done, FEMA welcomes them. Such suggestions could form the basis of a handbook or other Agency guidance.

Quite a number of changes were made in this section. Most basically the section was reorganized to apply one set of minimization standards to the disaster assistance program, another set of standards to the National Flood Insurance Program (NFIP), and the

general requirement of "minimization" to the rest of the Agency. In its administration of the NFIP, FIA does not take site specific actions (with a couple of minor exceptions). Rather, it establishes criteria for the availability of flood insurance and other forms of Federal assistance. This is in contrast to the implementation of the disaster assistance program under which disaster assistance is provided on a site specific basis. There are also basic differences between administering 40,000 to 50,000 individual disaster relief actions per year versus 1.8 million insurance policies in force and renewed each year.

The specific minimization standards in the interim rule applicable to the disaster assistance program have been altered slightly. Section 9.11(d) (1) and (2) were reworded for clarity and now appear at § 9.11(d)(1). Section 9.11(d)(3) (of the interim regulation) required those structures which were not prohibited in floodways to be elevated on piles or columns. This provision was taken out because of information indicating that piles or columns might be dangerous in a floodway. However, even if a structure is built in the floodway, it may not violate the encroachment standards, and of course must be elevated. Only if a new or substantially improved structure or facility is a functionally dependent use or facilitates an open space use may it be placed in a floodway.

As discussed above, § 9.11(d)(3) was changed to allow for variances from the elevation requirements, even in communities without flood elevations in effect under the NFIP.

Section 9.11(d)(7) was clarified to address new structures and substantial improvements. For the reasons set out above, new and substantially improved structures do not have to be elevated on piles or columns in floodways—fill is acceptable provided it does not violate the encroachment standards.

Section 9.11(e) establishes specific minimization standards for the NFIP. There are several basic provisions. First, FIA is to identify all coastal high hazard areas, with or without base flood elevations, by October 1, 1981. Second, FIA may only provide flood insurance for a new or substantially improved structure in a coastal high hazard area if the structure is elevated to the 100-year level including wave heights and such structure is rated to reflect the actual risk. These latter requirements shall take effect no later than February 1, 1981. The structure must also be adequately anchored. FIA is to notify communities with coastal high hazard areas and federally related lenders in such communities of the provisions of this paragraph. Notice to the lenders may be accomplished by the Federal instrumentalities to which the lenders are related.

FIA recently adopted a reliable method of determining wave heights. The first maps with wave heights went into effect in April of this year. In order to realistically appraise the risk in coastal areas, it is necessary to apply wave heights for insurance rating. In order to protect new development from the real risk, new and substantially improved structures must be built to the wave height level. Without applying wave heights in areas where they are known to be a factor (coastal high hazard areas), insurance availability would encourage unwise development by providing coverage and not requiring adequate elevation of structures.

Finally, wherever the Regional Director has been, pursuant to § 9.11(d)(1), precluded from providing assistance for a new or substantially improved structure in a floodway, FIA may not provide a new or renewed policy of flood insurance for that structure. In an effort to minimize harm by clearing the floodway of encroachments, FIA should not be insuring those structures in floodways for which disaster assistance will not be provided. An existing flood insurance policy will run to the end of the policy year.

The requirements of § 9.11 to minimize harm to people and property in floodplains goes far beyond the specific standards of § 9.11(d) and (e). In fact, these subsections are merely the bottom line. "Minimize" is defined as reducing to the smallest amount or degree possible. In order to comply with this standard FEMA will often have to go beyond the specific requirements of § 9.11(d) and (e). Compliance with local codes and other established criteria may also be inadequate to achieve minimization in many circumstances. However, FEMA will not be expected to employ unworkable means to reduce the risk to the smallest amount or degree possible.

§ 9.12 *Final Public Notice*

Only one comment was received on this section. It stated that the 15-day waiting period after the final public notice and prior to carrying out the action is too short. It is FEMA's determination that the § 9.12(f) standard of "15 days without good cause shown" is reasonable, particularly in the post-disaster situation.

There were a few changes made to this section. The first sentence was qualified to apply the section where "the Agency decides to take an action in or affecting a floodplain or wetland." This is consistent with the Orders.

There were several additions to § 9.12(d). First, the relationship between final public notice under the Orders and the OMB A-95, EIS, and environmental assessment processes was clarified.

Parallel to § 9.8, cumulative notice is provided for and the factors upon which it is to be allowed are set out. Due to the nature of the notice in explaining why the action is to be located in a floodplain, it is more difficult to justify cumulative notice in § 9.12 than in § 9.8. There must be a definite similarity among the actions to be covered by the notice to justify a cumulative notice. Unless this similarity exists, the cumulative notice will fail to address the issues required by § 9.12(e). Thus "similarity" was added as a factor needed for cumulative notice.

Section 9.12(d) also allows for early notice (§ 9.8) and final notice (§ 9.12) to be accomplished by a single notice where a damaged structure or facility is already being repaired by the State or local government at the time of the Damage Survey Report. Such notice is to contain the information required by both sections. The single notice is only allowable where the repair was not under federal control at the time it was initiated.

The final change in this section is to § 9.12(e)(7) which now allows, as an alternative to publishing a map of the area, inclusion of a statement that such map is available for public inspection with the address and telephone number of the location at which it may be inspected. FEMA recognizes that it may be unwieldy to publish this map.

§ 9.13 *Particular Types of Temporary Housing*

Several comments were received on this section. Comments suggested that "temporary housing" be clarified or defined to ensure its temporariness. To the extent that it is not temporary, the comments assert, there should be no special provision made for it. Temporary housing is defined at 44 CFR 205.45. While no specific time limit is placed on it, there is a performance standard applied which in practice limits the time for which the housing may be made available. Experience bears out this practical limitation.

Another comment pointed out that the requirement to elevate mobile homes placed for temporary housing to the greatest extent practicable might not comply with § 9.13(d)(4)(ii) which requires compliance with the provisions of the NFIP. In acknowledgment of this concern, to § 9.13(d)(4)(ii) was added: "Such standards may require elevation

to the base flood level in the absence of a variance."

One comment states that the requirement to elevate structures to the 100-year level should also be applied to mobile homes used for temporary housing. As was explained in the preamble to the interim regulations, it is not always practicable to elevate mobile homes to the 100-year level when they are being placed as temporary housing on a private or commercial site. Due to their structural character, it may be creating a danger to elevate mobile homes to a given level. Since mobile homes are the last resort for temporary housing and they are being placed temporarily, it is not always practicable to elevate mobile homes to the 100-year flood level. However, they must be elevated to the fullest extent practicable.

Section 9.13(e) was amended to no longer prohibit the sale of mobile homes in floodplains. The prohibition still applies in coastal high hazard areas and floodways. In the remainder of the floodplain, mobile homes may only be sold if after application of the 8-step process it is found that there is (1) a compelling need of the family or individual to buy a mobile home for permanent housing, and (2) a compelling requirement to locate the unit in a floodplain. Further, wherever FEMA sells or otherwise disposes of a mobile home in a floodplain, the unit is to be elevated to the 100-year level. The Regional Director is to notify the Associate Director for Disaster Response and Recovery whenever a floodplain location has been found to be the only practicable alternative for a mobile home sale.

§ 9.14 Disposal of Agency Property

A couple of comments were received on this section. One said that since the "no action" alternative is always viable, there is no reason to consider incompatible uses and therefore the priorities set out in § 9.14(b)(7) are unnecessary. We do not believe that the "no action" alternative will always be viable. However, due to the assortment of objectives associated with property disposal, the priorities of § 9.14(b)(7) are prefaced by the following:

To the extent that it would decrease the flood hazard to property and lives * * *.

The only changes may to § 9.14 were editorial.

§ 9.15 Planning Programs Affecting Land Use

No comments were received on this section and no changes were made in it.

§ 9.16 Notice to Private Persons

No comments were received on this section. However, after intra-agency discussion it was decided that section 4 of Executive Order 11988, after which this section was modeled, does not apply to FEMA as this Agency does not guarantee, approve, regulate or insure any financial transaction related to floodplains. We therefore took § 9.16 Notice to private persons out of the regulations altogether.

§ 9.16 Guidance to Applicants (Formerly § 9.17)

No comments were received on this section and no changes were made.

§ 9.17 Instructions to Applicants (Formerly § 9.18)

No comments were received on this section and no changes were made.

§ 9.18 Responsibilities (Formerly § 9.19)

No comments were received on this section and one change was made. To § 9.18(b)(1) was added a provision allowing the Associate Director for Disaster Response and Recovery to decide appeals of determinations made by the Regional Director.

§ 9.19 Delegation of Authority

This is a new section delegating the consultation function under section 2(d) of Executive Order 11988, as amended by section 5-207 of Executive Order 12148 to the Federal Insurance Administrator. Executive Order 11988 had originally delegated this function directly to FIA. With FIA's reorganization into FEMA, Executive Order 12148 delegated the consultation role to FEMA. Under this regulation, FIA will act as consultant to other federal agencies as these agencies develop their floodplain management regulations. FIA participates with the Council on Environmental Quality and the Water Resources Council in performing this function.

Accordingly, Chapter 1 of Title 44, Code of Federal Regulations is amended as follows:

PART 9—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

Sec.

Authority: Executive Order 11988, May 24, 1977; Executive Order 11990, May 24, 1977; Reorganization Plan No. 3 of 1978 (43 FR 41943); Executive Order 12127, April 1, 1979; Executive Order 12148, July 20, 1979.

§ 9.1 Purpose of part.

This regulation sets forth the policy, procedure and responsibilities to implement and enforce Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands.

§ 9.2 Policy.

(a) FEMA shall take no action unless and until the requirements of this regulation are complied with.

(b) It is the policy of the Agency to provide leadership in floodplain management and the protection of wetlands. Further, the Agency shall integrate the goals of the Orders to the greatest possible degree into its procedures for implementing NEPA. The Agency shall take action to:

(1) Avoid long- and short-term adverse impacts associated with the occupancy and modification of floodplains and the destruction and modification of wetlands;

(2) Avoid direct and indirect support of floodplain development and new construction in wetlands wherever there is a practicable alternative;

(3) Reduce the risk of flood loss;

(4) Promote the use of nonstructural flood protection methods to reduce the risk of flood loss;

(5) Minimize the impact of floods on human health, safety and welfare;

(6) Minimize the destruction, loss or degradation of wetlands;

(7) Restore and preserve the natural and beneficial values served by floodplains;

(8) Preserve and enhance the natural values of wetlands;

(9) Involve the public throughout the floodplain management and wetlands protection decision-making process;

(10) Adhere to the objectives of the Unified National Program for Floodplain Management; and

(11) Improve and coordinate the Agency's plans, programs, functions and resources so that the Nation may attain

the widest range of beneficial uses of the environment without degradation or risk to health and safety.

§ 9.3 Authority.

The authority for these regulations is (a) Executive Order 11988, May 24, 1977, which replaced Executive Order 11296, August 10, 1966, (b) Executive Order 11990, May 24, 1977, (c) Reorganization Plan No. 3 of 1978 (43 FR 41943); and (d) Executive Order 12127, April 1, 1979 (44 FR 1936). E.O. 11988 was issued in furtherance of the National Flood Insurance Act of 1968, as amended (Pub. L. 90–488); the Flood Disaster Protection Act of 1973, as amended (Pub. L. 92–234); and the National Environmental Policy Act of 1969 (NEPA) (Pub. L. 91–190). Section 2(d) of Executive Order 11988 requires issuance of new or amended regulations and procedures to satisfy its substantive and procedural provisions. E.O. 11990 was issued in furtherance of NEPA, and at section 6 required issuance of new or amended regulations and procedures to satisfy its substantive and procedural provisions.

§ 9.4 Definitions.

The following definitions shall apply throughout this regulation.

Action means any action or activity including: (a) acquiring, managing and disposing of federal lands and facilities; (b) providing federally undertaken, financed or assisted construction and improvements; and (c) conducting federal activities and programs affecting land use, including, but not limited to, water and related land resources, planning, regulating and licensing activities.

Actions Affecting or Affected by Floodplains or Wetlands means actions which have the potential to result in the long- or short-term impacts associated with (a) the occupancy or modification of floodplains, and the direct or indirect support of floodplain development, or (b) the destruction and modification of wetlands and the direct or indirect support of new construction in wetlands.

Agency means the Federal Emergency Management Agency (FEMA).

Agency Assistance means grants for projects or planning activities, loans, and all other forms of financial or technical assistance provided by the Agency.

Associate Director means the head of any Office or Administration of the Federal Emergency Management Agency, who has programmatic responsibility for a particular action.

Base Flood means the flood which has a one percent chance of being equalled or exceeded in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.

Base Floodplain means the 100-year floodplain (one percent chance floodplain).

Coastal High Hazard Area means the areas subject to high velocity waters including but not limited to hurricane wave wash or tsunamis. On a Flood Insurance Rate Map (FIRM), this appears as zone V1–30.

Critical Action means an action for which even a slight chance of flooding is too great. The minimum floodplain of concern for critical actions is the 500-year floodplain, i.e., critical action floodplain. Critical actions include, but are not limited to, those which create or extend the useful life of structures or facilities:

(a) such as those which produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials;

(b) such as hospitals and nursing homes, and housing for the elderly, which are likely to contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events;

(c) such as emergency operation centers, or data storage centers which contain records or services that may become lost or inoperative during flood and storm events; and

(d) such as generating plants, and other principal points of utility lines.

Direct Impacts means changes in floodplain or wetland values and functions and changes in the risk to lives and property caused or induced by an action or related activity. Impacts are caused whenever these natural values and functions are affected as a direct result of an action. An action which would result in the discharge of polluted storm waters into a floodplain or wetland, for example, would directly affect their natural values and functions. Construction-related activities, such as dredging and filling operations within the floodplain or a wetland would be another example of impacts caused by an action.

Director means the Director of the Federal Emergency Management Agency (FEMA).

Emergency Actions means emergency work essential to save lives and protect property and public health and safety performed under sections 305 and 306 of the Disaster Relief Act of 1974 (42 U.S.C. 5145 and 5146). See 44 CFR 205, subpart E.

Enhance means to increase, heighten, or improve the natural and beneficial values associated with wetlands.

Facility means any man-made or man-placed item other than a structure.

FEMA means the Federal Emergency Management Agency.

FIA means the Federal Insurance Administration.

Five Hundred Year Floodplain (the 500-year floodplain or 0.2 percent change floodplain) means that area, including the base floodplain, which is subject to inundation from a flood having a 0.2 percent chance of being equalled or exceeded in any given year.

Flood or *flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.

Flood Fringe means that portion of the floodplain outside of the floodway (often referred to as "floodway fringe").

Floodplain means the lowland and relatively flat areas adjoining inland and coastal waters including, at a minimum, that area subject to a one percent or greater chance of flooding in any given year. Wherever in this regulation the term "floodplain" is used, if a critical action is involved, "floodplain" shall mean the area subject to inundation from a flood having a 0.2 percent chance of occurring in any given year (500-year floodplain). "Floodplain" does not include areas subject only to mudflow until FIA adopts maps identifying "M" Zones.

Floodproofing means the modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out, or to reduce effects of water entry.

Floodway means that portion of the floodplain which is effective in carrying flow, within which this carrying capacity must be preserved and where the flood hazard is generally highest, i.e., where water depths and velocities are the greatest. It is that area which provides for the discharge of the base flood so the cumulative increase in water surface elevation is no more than one foot.

Flood Hazard Boundary Map (FHBM) means an offical map of a community, issued by the Director, where the boundaries of the flood, mudslide (i.e., mudflow) and related erosion areas having special hazards have been designated as Zone A, M, or E.

Flood Insurance Rate Map (FIRM) means an official map of a community on which the Director has delineated both the special hazard areas and the

risk premium zones applicable to the community.

Flood Insurance Study (FIS) means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Functionally Dependent Use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, (e.g., bridges, and piers).

Indirect Impacts means an indirect result of an action whenever the action induces or makes possible related activities which effect the natural values and functions of floodplains or wetlands or the risk to lives and property. Such impacts occur whenever these values and functions are potentially affected, either in the short- or long-term, as a result of undertaking an action.

Minimize means to reduce to the smallest amount or degree possible.

Mitigation means all steps necessary to minimize the potentially adverse effects of the proposed action, and to restore and preserve the natural and beneficial floodplain values and to preserve and enhance natural values of wetlands.

Natural Values of Floodplains and Wetlands means the qualities of or functions served by floodplains and wetlands which include but are not limited to: (a) water resource values (natural moderation of floods, water quality maintenance, groundwater recharge); (b) living resource values (fish, wildlife, plant resources and habitats); (c) cultural resource values (open space, natural beauty, scientific study, outdoor education, archeological and historic sites, recreation); and (d) cultivated resource values (agriculture, aquaculture, forestry).

New Construction means the construction of a new structure (including the placement of a mobile home) or facility or the replacement of a structure or facility which has been totally destroyed.

New Construction in Wetlands includes draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after the effective dates of the Orders, May 24, 1977.

Orders means Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.

Practicable means capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of all pertinent factors, such as environment, cost and technology.

Preserve means to prevent alterations to natural conditions and to maintain the values and functions which operate the floodplains or wetlands in their natural states.

Regional Director means the Regional Director of the Federal Emergency Management Agency for the Region in which FEMA is acting or the Disaster Recovery Manager when one is designated.

Regulatory Floodway means the area regulated by federal, State or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the National Flood Insurance Program).

Restore means to reestablish a setting or environment in which the natural functions of the floodplain can again operate.

Structures means walled or roofed buildings, including mobile homes and gas or liquid storage tanks.

Substantial Improvement means any repair, reconstruction or other improvement of a structure or facility, which has been damaged in excess of, or the cost of which equals or exceeds, 50% of the market value of the structure or replacement cost of the facility (including all "public facilities" as defined in the Disaster Relief Act of 1974) (a) before the repair or improvement is started, or (b) if the structure or facility has been damaged and is proposed to be restored, before the damage occurred. If a facility is an essential link in a larger system, the percentage of damage will be based on the relative cost of repairing the damaged facility to the replacement cost of the portion of the system which is operationally dependent on the facility. The term "substantial improvement" does not include any alteration of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places.

Support means to encourage, allow, serve or otherwise facilitate floodplain or wetland development. Direct support results from actions within a floodplain or wetland, and indirect support results from actions outside of floodplains or wetlands.

Wetlands means those areas which are inundated or saturated by surface or ground water with a frequency sufficient to support, or that under normal hydrologic conditions does or would support, a prevalence of vegetation or aquatic life typically adapted for life in saturated or seasonally saturated soil conditions. Examples of wetlands include, but are not limited to, swamps, fresh and salt water marshes, estuaries, bogs, beaches, wet meadows, sloughs, potholes, mud flats, river overflows and other similar areas. This definition includes those wetlands areas separated from their natural supply of water as a result of activities such as the construction of structural flood protection methods or solid-fill road beds and activities such as mineral extraction and navigation improvements. This definition is intended to be consistent with the definition utilized by the U.S. Fish and Wildlife Service in the publication entitled *Classification of Wetlands and Deep Water Habitats of the United States* (Cowardin, et al., 1977).

§ 9.5 Scope.

(a) *Applicability.* (1) These regulations apply to all Agency actions which have the potential to affect floodplains or wetlands or their occupants, or which are subject to potential harm by location in floodplains or wetlands.

(2) The basic test of the potential of an action to affect floodplains or wetlands is the action's potential (both by itself and when viewed cumulatively with other proposed actions) to result in the long- or short-term adverse impacts associated with:

(i) The occupancy or modification of floodplains, and the direct and indirect support of floodplain development; or

(ii) The destruction or modification of wetlands and the direct or indirect support of new construction in wetlands.

(3) This regulation applies to actions that were, on the effective date of the Orders (May 24, 1977), ongoing, in the planning and/or development stages, or undergoing implementation, and are incomplete as of the effective date of these regulations. The regulation also applies to proposed (new) actions. The Agency shall:

(i) Determine the applicable provisions of the Orders by analyzing whether the action in question has progressed beyond critical stages in the floodplain management and wetlands protection decision-making process, as set out below in § 9.6. This determination need only be made at the time that followup actions are being taken to complete or implement the action in question; and

(ii) Apply the provisions of the Orders and of this regulation to all such actions to the fullest extent practicable.

(b) *Limited exemption of ongoing actions involving wetlands located outside the floodplains.* (1) Executive Order 11990, Protection of Wetlands, contains a limited exemption not found

in Executive Order 11988, Floodplain Management. Therefore, this exemption applies only to actions affecting wetlands which are located outside the floodplains, and which have no potential to result in harm to or within floodplains or to support floodplain development.

(2) The following proposed actions that impact wetlands located outside of floodplains are exempt from this regulation:

(i) Agency-assisted or permitted projects which were under construction before May 24, 1977; and (ii) projects for which the Agency has proposed a draft of a final environmental impact statement (EIS) which adequately analyzes the action and which was filed before October 1, 1977. Proposed actions that impact wetlands outside of floodplains are not exempt if the EIS:

(A) Only generally covers the proposed action;

(B) Is devoted largely to related activities; or

(C) Treats the project area or program without an adequate and specific analysis of the floodplain and wetland implications of the proposed action.

(c) *Decision-making involving certain categories of actions.* The provisions set forth in this regulation are not applicable to the actions enumerated below except that the Regional Directors shall comply with the spirit of the Orders to the extent practicable. For any action which is excluded from the actions enumerated below, the full 8-step process applies (See § 9.6) except as indicated at paragraphs (d) and (f) of this section. The provisions of these regulations do not apply to the following (all references are to the Disaster Relief Act of 1974, Pub. L. 93–288, as amended):

(1) Assistance provided for emergency work essential to save lives and protect property and public health and safety performed pursuant to sections 305 and 306;

(2) Emergency Support Teams (sec. 304);

(3) Unemployment Assistance (sec. 407);

(4) Emergency Communications (sec. 415);

(5) Emergency Public Transportation (sec. 416);

(6) Fire Suppression Assistance (sec. 417);

(7) Community Disaster Loans (sec. 414), except to the extent that the proceeds of the loan will be used for repair of facilities or structures or for construction of additional facilities or structures;

(8) The following Individual and Family Grant Program (sec. 408) actions:

(i) Housing needs or expenses, except for restoring, repairing or building private bridges, purchase of mobile homes and provision of structures as minimum protective measures;

(ii) Personal property needs or expenses;

(iii) Transportation expenses;

(iv) Medical/dental expenses;

(v) Funeral expenses;

(vi) Limited home repairs;

(vii) Flood insurance premium;

(viii) Cost estimates;

(ix) Food expenses; and

(x) Temporary rental accommodations.

(9) Mortgage and rental assistance under sec. 404(b);

(10) Debris removal (sec. 403), except those grants involving non-emergency disposal of debris within a floodplain or wetland;

(11) Minimal home repairs (sec. 404(c));

(12) Repairs, under section 402, of less than $5,000 to damaged structures or facilities except for:

(i) actions in a floodway or coastal high hazard area; and

(ii) new or substantially improved structures or facilities.

(d) For each action enumerated below, the Regional Director shall apply steps 1, 2, 4, 5, and 8 of the decision-making process (§§ 9.7, 9.8, 9.10 and 9.11, see § 9.6). Steps 3 and 6 (§ 9.9) shall be carried out except that alternative sites outside the floodplain or wetland need not be considered. After assessing impacts of the proposed action on the floodplain or wetlands, and of the site on the proposed action, alternative actions to the proposed action, if any, and the "no action" alternative shall be considered. The Regional Director may also require certain other portions of the decision-making process to be carried out for individual actions as is deemed necessary. For any action which is excluded from the actions listed below, except as indicated in paragraphs (c) and (f) of this section, the full 8-step process applies (see § 9.6). The references are to the Disaster Relief Act of 1974, Pub. L. 93–288, as amended.

(1) Actions performed under the Individual and Family Grant Program (sec. 408) for restoring or repairing a private bridge, except where two or more individuals or families are authorized to pool their grants for this purpose.

(2) Small project grants (sec. 419), except to the extent that federal funding involved is used for construction of new facilities or structures.

(3) Replacement of building contents, materials and equipment. (secs. 402 and 419).

(4) Repairs under section 402 to damaged facilities or structures, except any such action for which one or more of the following is applicable:

(i) FEMA estimated cost of repairs is more than 50% of the estimated reconstruction cost of the entire facility or structure, or is more than $100,000, or

(ii) The action is located in a floodway or coastal high hazard area, or

(iii) The facility or structure is one which has previously sustained structural damage from flooding due to a major disaster or emergency or on which a flood insurance claim has been paid, or

(iv) The action is a critical action.

(e) *Other categories of actions.* Based upon the completion of the 8-step decision-making process (§ 9.6), the Director may find that a specific category of actions either: offers no potential for carrying out the purposes of the Orders and shall be treated as those actions listed in § 9.5(c), or has no practicable alternative sites and shall be treated as those actions listed in § 9.5(d). This finding will be made in consultation with the Water Resources Council, the Federal Insurance Administration and the Council on Environmental Quality as provided in section 2(d) of E.O. 11988. Public notice of each of these determinations shall include publication in the Federal Register, and a 30 day comment period.

(f) *The National Flood Insurance Program (NFIP).*

(1) Most of what is done by FIA in adminstering the National Flood Insurance Program is performed on a program-wide basis. For all regulations, procedures or other issuances making or amending program policy, FIA shall apply the 8-step decision-making process to that program-wide action. The action to which the 8-step process must be applied is the establishment of programmatic standards or criteria, not the application of programmatic standards or criteria to specific situations. Thus, for example, FIA would apply the 8-step process to a programmatic determination of categories of structures to be insured, but not to whether to insure each individual structure. The two prime examples of where FIA does take site specific actions which would require individual application of the 8-step process are property acquisition under section 1362 of the National Flood Insurance Act of 1968, as amended, and the issuance of an exception to a community under 44 C.F.R. § 60.6(b). (See also § 9.9(e)(6) and § 9.11(e).)

(2) The provisions set forth in this regulation are not applicable to the actions enumerated below except that

the Federal Insurance Administrator shall comply with the spirit of the Orders to the extent practicable:

(i) The issuance of individual flood insurance policies and policy interpretations;

(ii) The adjustment of claims made under the Standard Flood Insurance Policy;

(iii) The hiring of independent contactors to assist in the implementation of the National Flood Insurance Program;

(iv) The issuance of individual flood insurance maps, Map Information Facility map determinations and map amendments; and

(v) The conferring of eligibility for emergency or regular program (NFIP) benefits upon communities.

§ 9.6 Decision-making process.

(a) *Purpose.* The purpose of this section is to set out the floodplain management and wetlands protection decision-making process to be followed by the Agency in applying the Orders to its actions. While the decision-making process was initially designed to address the floodplain Order's requirements, the process will also satisfy the wetlands Order's provisions due to the close similarity of the two directives. The numbering of Steps 1 through 8 does not firmly require that the steps be followed sequentially. As information is gathered throughout the decision-making process and as additional information is needed, reevaluation of lower numbered steps may be necessary.

(b) Except as otherwise provided in § 9.5 (c), (d) and (f), when proposing an action, the Agency shall apply the 8-step decision-making process. FEMA shall:

Step 1. Determine whether the proposed action is located in a wetland and/or the 100-year floodplain (500-year floodplain for critical actions); and whether it has the potential to affect or be affected by a floodplain or wetland (see § 9.7);

Step 2. Notify the public at the earliest possible time of the intent to carry out an action in a floodplain or wetland, and involve the affected and interested public in the decision-making process (see § 9.8);

Step 3. Identify and evaluate practicable alternatives to locating the proposed action in a floodplain or wetland (including alternative sites, actions and the "no action" option) (see § 9.9). If a practicable alternative exists outside the floodplain or wetland FEMA must locate the action at the alternative site.

Step 4. Identify the potential direct and indirect impacts associated with the occupancy or modification of floodplains and wetlands and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action (see § 9.10);

Step 5. Minimize the potential adverse impacts and support to or within floodplains and wetlands to be identified under Step 4, restore and preserve the natural and beneficial values served by floodplains, and preserve and enhance the natural and beneficial values served by wetlands (see § 9.11);

Step 6. Reevaluate the proposed action to determine first, if it is still practicable in light of its exposure to flood hazards, the extent to which it will aggravate the hazards to others, and its potential to disrupt floodplain and wetland values and second, if alternatives preliminarily rejected at Step 3 are practicable in light of the information gained in Steps 4 and 5. FEMA shall not act in a floodplain or wetland unless it is the only practicable location (see § 9.9);

Step 7. Prepare and provide the public with a finding and public explanation of any final decision that the floodplain or wetland is the only practicable alternative (see § 9.12); and

Step 8. Review the implementation and post-implementation phases of the proposed action to ensure that the requirements stated in § 9.11 are fully implemented. Oversight responsibility shall be integrated into existing processes.

§ 9.7 Determination of proposed action's location.

(a) The purpose of this section is to establish Agency procedures for determining whether any action as proposed is located in or affects (1) the base floodplain (the Agency shall substitute the 500-year floodplain for the base floodplain where the action being proposed involves a critical action), or (2) a wetland.

(b) *Information needed.* The Agency shall obtain enough information so that it can fulfill the requirements of the Orders to (1) avoid floodplain and wetland locations unless they are the only practicable alternatives; and (2) minimize harm to and within floodplains and wetlands. In all cases, FEMA shall determine whether the proposed action is located in a floodplain or wetland. In the absence of a finding to the contrary, FEMA may assume that a proposed action involving a facility or structure that has been flooded is in the floodplain. Information about the 100-year and 500-year floods and location of floodways and coastal high hazard areas may also be needed to comply with these regulations, especially § 9.11. The following additional flooding characteristics shall be identified by the Regional Director as appropriate:

(i) Velocity of floodwater;

(ii) Rate of rise of floodwater;

(iii) Duration of flooding;

(iv) Available warning and evacuation time and routes;

(v) Special problems:

(A) Levees;

(B) Erosion;

(C) Subsidence;

(D) Sink holes;

(E) Ice jams;

(F) Debris load;

(G) Pollutants;

(H) Wave heights;

(I) Groundwater flooding;

(J) Mudflow.

(c) *Floodplain determination.* (1) In the search for flood hazard information, FEMA shall follow the sequence below:

(i) The Regional Director shall consult the FIA Flood Insurance Rate Map (FIRM) the Flood Hazard Floodway Boundary Map (FHFBM) and the Flood Insurance Study (FIS).

(ii) If a detailed map (FIRM or FHFBM) is not available, the Regional Director shall consult an FIA Flood Hazard Boundary Map (FHBM). If data on flood elevations, floodways, or coastal high hazard areas are needed, or if the map does not delineate the flood hazard boundaries in the vicinity of the proposed site, the Regional Director shall seek the necessary detailed information and assistance from the sources listed below.

Sources of Maps and Technical Information

Department of Agriculture: Soil Conservation Service
Department of the Army: Corps of Engineers
Department of Commerce: National Oceanic and Atmospheric Administration
Federal Insurance Administration
FEMA Regional Offices/Division of Insurance and Hazard Mitigation
Department of the Interior:
Geological Survey
Bureau of Land Management
Bureau of Reclamation
Tennessee Valley Authority
Delaware River Basin Commission
Susquehanna River Basin Commission
States

(iii) If the sources listed do not have or know of the information necessary to comply with the Orders' requirements, the Regional Director shall seek the services of a federal or other engineer experienced in this type of work.

(2) If a decision involves an area or location within extensive federal or state holdings or a headwater area, and an FIS, FIRM, FHFBM, or FHBM is not available, the Regional Director shall

seek information from the land administering agency before information and/or assistance is sought from the sources listed in this section. If none of these sources has information or can provide assistance, the services of an experienced federal or other engineer shall be sought as described above.

(d) *Wetland determination.* The following sequence shall be followed by the Agency in making the wetland determination.

(1) The Agency shall consult with the U.S. Fish and Wildlife Service (FWS) for information concerning the location, scale and type of wetlands within the area which could be affected by the proposed action.

(2) If the FWS does not have adequate information upon which to base the determination, the Agency shall consult wetland inventories maintained by the Army Corps of Engineers, the Environmental Protection Agency, various states, communities and others.

(3) If state or other sources do not have adequate information upon which to base the determination, the Agency shall carry out an on-site analysis performed by a representative of the FWS or other qualified individual for wetlands characteristics based on the performance definition of what constitutes a wetland.

(4) If an action is in a wetland but not in a floodplain, and the action is new construction, the provisions of this regulation shall apply. Even if the action is not in a wetland, the Regional Director shall determine if the action has the potential to result in indirect impacts on wetlands. If so, all adverse impacts shall be minimized. For actions which are in a wetland and the floodplain, completion of the decision-making process is required. (See § 9.6.) In such a case the wetland will be considered as one of the natural and beneficial values of floodplain.

§ 9.8 Public notice requirements.

(a) *Purpose.* The purpose of this section is to establish the initial notice procedures to be followed when proposing any action in or affecting floodplains or wetlands.

(b) *General.* The Agency shall provide adequate information to enable the public to have impact on the decision outcome for all actions having potential to affect, adversely, or be affected by floodplains or wetlands that it proposes. To achieve this objective, the Agency shall:

(1) Provide the public with adequate information and opportunity for review and comment at the earliest possible time and throughout the decision-making process; and upon completion of this process, provide the public with an accounting of its final decisions (see § 9.12); and

(2) Rely on its environmental assessment and OMB Circular A-95 processes, to the extent possible, as vehicles for public notice, involvement and explanation.

(c) *Early public notice.* The Agency shall provide opportunity for public involvement in the decision-making process through the provision of public notice upon determining that the proposed action can be expected to affect or be affected by floodplains or wetlands. Whenever possible, notice shall precede major project site identification and analysis in order to preclude the foreclosure of options consistent with the Orders.

(1) For an action for which an environmental impact statement is being prepared, the Notice of Intent to File an EIS is adequate to constitute the early public notice, if it includes the information required under paragraph (c)(5) of this section.

(2) For each action having national significance for which notice is being provided, the Agency shall use the Federal Register as the minimum means for notice, and shall provide notice by mail to national organizations reasonably expected to be interested in the action. The additional notices listed in paragraph (c)(4) of this section shall be used in accordance with the determination made under paragraph (c)(3) of this section.

(3) The Agency shall base its determination of appropriate notices, adequate comment periods, and whether to issue cumulative notices (paragraphs (c)(4), (c)(6) and (c)(7) of this section) on factors which include, but are not limited to:

(i) Scale of the action;

(ii) Potential for controversy;

(iii) Degree of public need;

(iv) Number of affected agencies and individuals; and

(v) Its anticipated potential impact.

(4) For each action having primarily local importance for which notice is being provided, notice shall be made in accordance with the criteria under paragraph(c)(3) of this section, and shall entail as appropriate:

(i) Notice to State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised).

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Information required in the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(x) Holding a public hearing.

(5) The notice shall include:

(i) A description of the action, its purpose and a statement of the intent to carry out an action affecting or affected by a floodplain or wetland;

(ii) Based on the factors in (c)(3), above, a map of the area or other indentification of the floodplain and/or wetland areas which is of adequate scale and detail so that the location is descernible; instead of publication of such map, FEMA may state that such map is available for public inspection, including the location at which such map may be inspected and a telephone number to call for information;

(iii) Based on the factors in (c)(3), above, a description of the type, extent and degree of hazard involved and the floodplain or wetland values present; and

(iv) Identification of the responsible official or organization for implementing the proposed action, and from whom further information can be obtained.

(6) The Agency shall provide for an adequate comment period.

(7) In a post-disaster situation in particular, the requirement for early public notice may be met in a cumulative manner based on the factors set out in paragraph (c)(3) of this section. Several actions may be addressed in one notice or series of notices. For some actions involving limited public interest a single notice in a local newspaper or letter to interested parties may suffice.

(d) *Continuing public notice.* The Agency shall keep the public informed of the progress of the decision-making process through additional public notices at key points in the process. The preliminary information provided under paragraph (c)(5) of this section shall be augmented by the findings of the adverse effects of the proposed actions and steps necessary to mitigate them. This responsibility shall be performed for actions requiring the preparation of an EIS, and all other actions having the potential for major adverse impacts, or the potential for harm to the health and safety of the general public.

§ 9.9 Analysis and reevaluation of practicable alternatives.

(a) *Purpose.* (1) The purpose of this section is to expand upon the directives set out in § 9.6, above, in order to clarify and emphasize the Orders' key requirements to avoid floodplains and wetlands unless there is no practicable alternative.

(2) Step 3 is a preliminary determination as to whether the floodplain is the only practicable location for the action. It is a preliminary determination because it comes early in the decision-making process when the Agency has a limited amount of information. If it is clear that there is a practicable alternative, or the floodplain or wetland is itself not a practicable location, FEMA shall then act on that basis. Provided that the location outside the floodplain or wetland does not indirectly impact floodplains or wetlands or support development therein (see § 9.10), the remaining analysis set out by this regulation is not required. If such location does indirectly impact floodplains or wetlands or support development therein, the remaining analysis set out by this regulation is required. If the preliminary determination is to act in the floodplain, FEMA shall gather the additional information required under Steps 4 and 5 and then reevaluate all the data to determine if the floodplain or wetland is the only practicable alternative.

(b) *Analysis of practicable alternatives.* The Agency shall identify and evaluate practicable alternatives to carrying out a proposed action in floodplains or wetlands, including:

(1) Alternative sites outside the floodplain or wetland;

(2) Alternative actions which serve essentially the same purpose as the proposed action, but which have less potential to affect or be affected by the floodplain or wetlands; and

(3) *No action.* The floodplain and wetland site itself must be a practicable location in light of the factors set out in this section.

(c) The Agency shall analyze the following factors in determining the practicability of the alternatives set out in paragraph (b), above:

(1) Natural environment (topography, habitat, hazards, etc.);

(2) Social concerns (aesthetics, historical and cultural values, land patterns, etc.);

(3) Economic aspects (costs of space, construction, services, and relocation); and

(4) Legal constraints (deeds, leases, etc.).

(d) *Action following the analysis of practicable alternatives.*

(1) The Agency shall not locate the proposed action in the floodplain or in a wetland if a practicable alternative exists outside the floodplain or wetland.

(2) For critical actions, the Agency shall not locate the proposed action in the 500-year floodplain if a practicable alternative exists outside the 500-year floodplain.

(3) Even if no practicable alternative exists outside the floodplain or wetland, in order to carry out the action the floodplain or wetland must itself be a practicable location in light of the review required in this section.

(e) *Reevaluation of alternatives.* Upon determination of the impact of the proposed action to or within the floodplain or wetland and of what measures are necessary to comply with the requirement to minimize harm to and within floodplains and wetlands (§ 9.11), FEMA shall:

(1) Determine whether:

(i) The action is still practicable at a floodplain or wetland site in light of the exposure to flood risk and the ensuing disruption of natural values;

(ii) The floodplain or wetland site is the only practicable alternative;

(iii) There is a potential for limiting the action to increase the practicability of previously rejected non-floodplain or wetland sites and alternative actions; and

(iv) Minimization of harm to or within the floodplain can be achieved using all practicable means.

(2) Take no action in a floodplain unless the importance of the floodplain site clearly outweighs the requirement of E.O. 11988 to:

(i) Avoid direct or indirect support of floodplain development;

(ii) Reduce the risk of flood loss;

(iii) Minimize the impact of floods on human safety, health and welfare; and

(iv) Restore and preserve floodplain values.

(3) Take no action in a wetland unless the importance of the wetland site clearly outweighs the requirements of E.O. 11990 to:

(i) Avoid the destruction or modification of the wetlands;

(ii) Avoid direct or indirect support of new construction in wetlands;

(iii) Minimize the destruction, loss or degradation of wetlands; and

(iv) Preserve and enhance the natural and beneficial values of wetlands.

(4) In carrying out this balancing process, give the factors in paragraphs (e)(2) and (3), above, the great weight intended by the Orders.

(5) Choose the "no action" alternative where there are no practicable alternative actions or sites and where the floodplain or wetland is not itself a practicable alternative. In making the assessment of whether a floodplain or wetland location is itself a practicable alternative, the practicability of the floodplain or wetland location shall be balanced against the practicability of not carrying out the action at all. That is, even if there is no practicable alternative outside of the floodplain or wetland, the floodplain or wetland itself must be a practicable location in order for the action to be carried out there. To be a practicable location, the importance of carrying out the action must clearly outweigh the requirements of the Orders listed in paragraphs (e) (2) and (e)(3) of this section. Unless the importance of carrying out the action clearly outweighs those requirements, the "no action" alternative shall be selected.

(6) In any case in which the Regional Director has selected the "no action" option, FIA may not provide a new or renewed contract of flood insurance for that structure.

§ 9.10 Identify impacts of proposed actions.

(a) *Purpose.* The purpose of this section is to ensure that the effects of proposed Agency actions are identified.

(b) The Agency shall identify the potential direct and indirect adverse impacts associated with the occupancy and modification of floodplains and wetlands and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action. Such identification of impacts shall be to the extent necessary to comply with the requirements of the Orders to avoid floodplain and wetland locations unless they are the only practicable alternatives and to minimize harm to and within floodplains and wetlands.

(c) This identification shall consider whether the proposed action will result in an increase in the useful life of any structure or facility in question, maintain the investment at risk and exposure of lives to the flood hazard or forego an opportunity to restore the natural and beneficial values served by floodplains or wetlands. Regional Offices of the U.S. Fish and Wildlife Service may be contacted to aid in the identification and evaluation of potential impacts of the proposed action on natural and beneficial floodplain and wetland values.

(d) In the review of a proposed or alternative action, the Regional Director shall specifically consider and evaluate impacts associated with modification of wetlands and floodplains regardless of

its location; additional impacts which may occur when certain types of actions may support subsequent action which have additional impacts of their own; adverse impacts of the proposed actions on lives and property and on natural and beneficial floodplain and wetland values; and the three categories of factors listed below:

(1) *Flood hazard-related factors.* These include for example, the factors listed in § 9.7(b)(2);

(2) *Natural values-related factors.* These include, for example, the following: Water resource values (natural moderation of floods, water quality maintenance, and ground water recharge); living resource values (fish and wildlife and biological productivity); cultural resource values (archeological and historic sites, and open space recreation and green belts); and agricultural, aquacultural and forestry resource values.

(3) *Factors relevant to a proposed action's effects on the survival and quality of wetlands.* These include, for example, the following: Public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion; maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

§ 9.11 Mitigation.

(a) *Purpose.* The purpose of this section is to expand upon the directives set out in § 9.6, above, and to set out the mitigative actions required if the preliminary determination is made to carry out an action that affects or is in a floodplain or wetland.

(b) *General provisions.* (1) The Agency shall design or modify its actions so as to minimize harm to or within the floodplain;

(2) The Agency shall minimize the destruction, loss or degradation of wetlands;

(3) The Agency shall restore and preserve natural and beneficial floodplain values; and

(4) The Agency shall preserve and enhance natural and beneficial wetland values.

(c) *Minimization provisions.* The Agency shall minimize:

(1) Potential harm to lives and the investment at risk from the base flood, or, in the case of critical actions, from the 500-year flood;

(2) Potential adverse impacts the action may have on others; and

(3) Potential adverse impact the action may have on floodplain and wetland values.

(d) *Minimization standards.* In its implementation of the Disaster Relief Act of 1974, the Agency shall apply at a minimum, the following standards to its actions to comply with the requirements of paragraphs (b) and (c), of this section: Except as provided in sections 9.5(c), and (d), any Agency action to which the following specific requirements do not apply, shall nevertheless be subject to the full 8-step process (see § 9.6) including the general requirement to minimize harm to and within floodplains:

(1) There shall be no new construction or substantial improvement in a floodway, and no new construction in a coastal high hazard area, except for:

(i) A functionally dependent use; or

(ii) A structure or facility which facilitates an open space use.

(2) For a structure which is a functionally dependent use, or which facilitates an open space use, the following applies. There shall be no construction of a new or substantially improved structure in a coastal high hazard area unless it is elevated on adequately anchored pilings or columns, and securely anchored to such piles or columns so that the lowest portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level (the 500-year flood level for critical actions) (including wave height). The structure shall be anchored so as to withstand velocity waters and hurricane wave wash. The Regional Director shall be responsible for determining the base flood level, including the wave height, in all cases. Where there is a FIRM in effect, it shall be the basis of the Regional Director's determination. If the FIRM does not reflect wave heights, or if there is no FIRM in effect, the Regional Director is responsible for delineating the base flood level, including wave heights.

(3) *Elevation of structures.* (i) There shall be no new construction or substantial improvement of structures unless the lowest floor of the structures (including basement) is at or above the level of the base flood.

(ii) There shall be no new construction or substantial improvement of structures involving a critical action unless the lowest floor of the structure (including the basement) is at or above the level of the 500-year flood.

(iii) If the subject structure is nonresidential, FEMA may, instead of elevating the structure to the 100-year or 500-year level, as appropriate, approve the design of the structure and its attendant utility and sanitary facilities so that below the flood level the structure is water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(iv) The provisions of paragraphs (d)(3)(i), (ii), and (iii) of this section do not apply to the extent that the Federal Insurance Administration has granted an exception under 44 CFR § 60.6(b) (formerly 24 CFR § 1910.6(b)), or the community has granted a variance which the Regional Director determines is consistent with 44 CFR § 60.6(a) (formerly 24 CFR 1910.6(a)). In a community which does not have a FIRM in effect, FEMA may approve a variance from the standards of paragraphs (d)(3)(i), (ii), and (iii) of this section, after compliance with the standards of 44 CFR 60.6(a).

(4) There shall be no encroachments, including fill, new construction, substantial improvements of structures or facilities, or other development within a designated regulatory floodway that would result in any increase in flood levels within the community during the occurrence of the base flood discharge. Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the base floodplain unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(5) Even if an action is a functionally dependent use or facilitates open space uses (under paragraphs (d) (1) or (2) of this section) and does not increase flood heights (under paragraph (d)(4) of this section), such action may only be taken in a floodway or coastal high hazard area if:

(i) Such site is the only practicable alternative; and

(ii) Harm to and within the floodplain is minimized.

(6) In addition to standards (d)(1) through (d)(5) of this section, no action may be taken if it is inconsistent with the criteria of the National Flood Insurance Program (44 CFR 59 *et seq.*). or any more restrictive federal, State or local floodplain management standards.

(7) New construction and substantial improvement of structures shall be elevated on open works (walls, columns,

piers, piles, etc.) rather than on fill, in all cases in coastal high hazard areas and elsewhere, where practicable.

(8) To minimize the effect of floods on human health, safety and welfare, the Agency shall:

(i) Where appropriate, integrate all of its proposed actions in floodplains into existing flood warning and preparedness plans and ensure that available flood warning time is reflected;

(ii) Facilitate adequate access and egress to and from the site of the proposed action; and

(iii) Give special consideration to the unique hazard potential in flash flood, rapid-rise or tsunami areas.

(9) In the replacement of building contents, materials and equipment, the Regional Director shall require as appropriate, disaster proofing of the building and/or elimination of such future losses by relocation of those building contents, materials and equipment outside or above the base floodplain or the 500-year floodplain for critical actions.

(e) In the implementation of the National Flood Insurance Program, the Federal Insurance Administrator:

(1) Shall identify all coastal high hazard areas (with or without base flood elevations) in the United States by October 1, 1981;

(2) Beginning February 1, 1981, may only provide flood insurance for new construction or a substantial improvement in a coastal high hazard area if:

(i) The structure is individually rated by FIA based on the structure's capacity to withstand damage from the 100-year frequency flood (500-year flood for critical actions) including, but not limited to, an analysis of the following:

(A) flood risk;

(B) flood related erosion risk;

(C) soil composition; and

(D) stability of the structure;

(ii) Wave heights have been designated for the site of the structure either by FIA or by another source, to FIA's technical satisfaction. Without the designation of wave heights, no flood insurance may be provided as the structure will be considered unratable; and

(iii) The structure is elevated on adequately anchored pilings or columns, and securely anchored to such piles or columns so that the lowest portion of the structural members of the lowest floor (excluding the piles or columns) is elevated to or above the base flood level (the 500-year flood level for critical actions) (including wave heights). The structure shall be anchored so as to withstand velocity waters and hurricane wave wash.

(3) Shall notify communities with coastal high hazard areas and federally related lenders in such communities, of the provisions of this paragraph. Notice to the lenders may be accomplished by the federal instrumentalities to which the lenders are related.

(4) In any case in which the Regional Director has been, pursuant to § 9.11(d)(1), precluded from providing assistance for a new or substantially improved structure in a floodway, FIA may not provide a new or renewed policy of flood insurance for that structure.

(f) *Restore and preserve.* (1) For any action taken by the Agency which affects the floodplain or wetland and which has resulted in, or will result in, harm to the floodplain or wetland, the Agency shall act to restore and preserve the natural and beneficial values served by floodplains and wetlands.

(2) Where floodplain or wetland values have been degraded by the proposed action, the Agency shall identify, evaluate and implement measures to restore the values.

(3) If an action will result in harm to or within the floodplain or wetland, the Agency shall design or modify the action to preserve as much of the natural and beneficial floodplain and wetland values as is possible.

§ 9.12 Final public notice.

If the Agency decides to take an action in or affecting a floodplain or wetland, it shall provide the public with a statement of its final decision and shall explain the relevant factors considered by the Agency in making this determination.

(a) For its programs that are subject to OMB Circular A-95 (revised), the Agency shall send the final notice to the State and areawide A-95 clearinghouse for the affected area. In addition, those sent notices under § 9.8 shall also be provided the final notice.

(b) For actions for which an environmental impact statement is being prepared, the FEIS is adequate to constitute final notice in all cases except where:

(1) Significant modifications are made in the FEIS after its initial publication;

(2) Significant modifications are made in the development plan for the proposed action; or

(3) Significant new information becomes available in the interim between issuance of the FEIS and implementation of the proposed action.

If any of these situations develop, the Agency shall prepare a separate final notice that contains the contents of paragraph (e) of this section and shall make it available to those who received the FEIS. A minimum of 15 days shall, without good cause shown, be allowed for comment on the final notice.

(c) For actions for which an environmental assessment was prepared, the Notice of No Significant Impact is adequate to constitute final public notice, if it includes the information required under paragraph (e) of this section.

(d) For all other actions, the finding shall be made in a document separate from those described in paragraphs (a), (b), and (c) of this section. Based on an assessment of the following factors, the requirement for final notice may be met in a cumulative manner:

(1) Scale of the action;

(2) Potential for controversy;

(3) Degree of public need;

(4) Number of affected agencies and individuals;

(5) Its anticipated potential impact; and

(6) Similarity of the actions, i.e., to the extent that they are susceptible of common descriptions and assessments.

When a damaged structure or facility is already being repaired by the State or local government at the time of the Damage Survey Report, the requirements of Steps 2 and 7 (§§ 9.8 and 9.12) may be met by a single notice. Such notice shall contain all the information required by both sections.

(e) The final notice shall include the following:

(1) A statement of why the proposed action must be located in an area affecting or affected by a floodplain or a wetland;

(2) A description of all significant facts considered in making this determination;

(3) A list of the alternatives considered;

(4) A statement indicating whether the action conforms to applicable state and local floodplain protection standards;

(5) A statement indicating how the action affects or is affected by the floodplain and/or wetland, and how mitigation is to be achieved;

(6) Identification of the responsible official or organization for implementation and monitoring of the proposed action, and from whom further information can be obtained; and

(7) A map of the area or a statement that such map is available for public inspection, including the location at which such map may be inspected and a telephone number to call for information.

(f) After providing the final notice, the Agency shall, without good cause shown, wait at least 15 days before carrying out the action.

§ 9.13 Particular types of temporary housing.

(a) The purpose of this section is to set forth the procedures whereby the Agency will provide certain specified types of temporary housing.

(b) Prior to providing the types of temporary housing enumerated in paragraph (c) of this section, the Agency shall comply with the provisions of this section. For all temporary housing not enumerated below, the full 8-step process (see § 9.6) applies.

(c) The following temporary housing actions are subject to the provisions of this section and not the full 8-step process:

(1) Providing housing in existing resources; and

(2) Placing a mobile home or readily fabricated dwelling on a private or commercial site, but not a group site.

(d) The actions set out in paragraph (c) of this section are subject to the following decision-making process:

(1) The temporary housing action shall be evaluated in accordance with the provisions of § 9.7 to determine if it is in or affects a floodplain or wetland.

(2) No mobile home or readily fabricated dwelling may be placed on a private or commercial site in a floodway or coastal high hazard area.

(3) An individual or family shall not be housed in a floodplain or wetland unless the Regional Director has complied with the provisions of § 9.9 to determine that such site is the only practicable alternative. The following factors shall be substituted for the factors in §§ 9.9(c) and 9.9(e) (2) through (4):

(i) Speedy provision of temporary housing;

(ii) Potential flood risk to the temporary housing occupant;

(iii) Cost effectiveness;

(iv) Social and neighborhood patterns;

(v) Timely availability of other housing resources; and

(vi) Potential harm to the floodplain or wetland.

(4) An individual or family shall not be housed in a floodplain or wetland (except in existing resources) unless the Regional Director has complied with the provisions of § 9.11 to minimize harm to and within floodplains and wetlands. The following provisions shall be substituted for the provisions of § 9.11(d) for mobile homes:

(i) No mobile home or readily fabricated dwelling may be placed on a private or commercial site unless it is elevated to the fullest extent practicable up to the base flood level and adequately anchored.

(ii) No mobile home or readily fabricated dwelling may be placed if such placement is inconsistent with the criteria of the National Flood Insurance Program (44 CFR 59 *et seq.)* or any more restrictive federal, State or local floodplain management standard. Such standards may require elevation to the base flood level in the absence of a variance.

(iii) Mobile homes shall be elevated on open works (walls, columns, piers, piles, etc.) rather than on fill where practicable.

(iv) To minimize the effect of floods on human health, safety and welfare, the Agency shall:

(A) Where appropriate, integrate all of its proposed actions in placing mobile homes for temporary housing in floodplains into existing flood warning and preparedness plans and ensure that available flood warning time is reflected;

(B) Provide adequate access and egress to and from the proposed site of the mobile home; and

(C) Give special consideration to the unique hazard potential in flash flood and rapid-rise areas.

(5) FEMA shall comply with Step 2 Early Public Notice (§ 9.8(c)) and Step 7 Final Public Notice (§ 9.12). In providing these notices, the emergency nature of temporary housing shall be taken into account.

(e) FEMA shall not sell or otherwise dispose of mobile homes or other readily fabricated dwellings which would be located in floodways or coastal high hazard areas. FEMA shall not sell or otherwise dispose of mobile homes or other readily fabricated dwellings which would be located in floodplains or wetlands unless there is full compliance with the 8-step process. Given the vulnerability of mobile homes to flooding, a rejection of a non-floodplain location alternative and of the no-action alternative shall be based on (1) a compelling need of the family or individual to buy a mobile home for permanent housing, and (2) a compelling requirement to locate the unit in a floodplain. Further, FEMA shall not sell or otherwise dispose of mobile homes or other readily fabricated dwellings in a floodplain unless they are elevated at least to the level of the 100-year flood. The Regional Director shall notify the Associate Director for Disaster Response and Recovery of each instance where a floodplain location has been found to be the only practicable alternative for a mobile home sale.

§ 9.14 Disposal of Agency property.

(a) The purpose of this section is to set forth the procedures whereby the Agency shall dispose of property.

(b) Prior to its disposal by sale, lease or other means of disposal, property proposed to be disposed of by the Agency shall be reviewed according to the decision-making process set out in § 9.6, above, as follows:

(1) The property shall be evaluated in accordance with the provisions of § 9.7 to determine if it affects or is affected by a floodplain or wetland;

(2) The public shall be notified of the proposal and involved in the decision-making process in accordance with the provisions of § 9.8;

(3) Practicable alternatives to disposal shall be evaluated in accordance with the provisions of § 9.9. For disposals, this evaluation shall focus on alternative actions (conveyance for an alternative use that is more consistent with the floodplain management and wetland protection policies set out in § 9.2 than the one proposed, e.g., open space use for park or recreational purposes rather than high intensity uses), and on the "no action" option (retain the property);

(4) Identify the potential impacts and support associated with the disposal of the property in accordance with § 9.10;

(5) Identify the steps necessary to minimize, restore, preserve and enhance in accordance with § 9.11. For disposals, this analysis shall address all four of these components of mitigation where unimproved property is involved, but shall focus on minimization through floodproofing and restoration of natural values where improved property is involved;

(6) Reevaluate the proposal to dispose of the property in light of its exposure to the flood hazard and its natural values-related impacts, in accordance with § 9.9. This analysis shall focus on whether it is practicable in light of the findings from §§ 9.10 and 9.11 to dispose of the property, or whether it must be retained. If it is determined that it is practicable to dispose of the property, this analysis shall identify the practicable alternative that best achieves all of the components of the Orders' mitigation responsibility;

(7) To the extent that it would decrease the flood hazard to lives and property, the Agency shall, wherever practicable, dispose of the properties according to the following priorities:

(i) Properties located outside the floodplain;

(ii) Properties located in the flood fringe; and

(iii) Properties located in a floodway, regulatory floodway or coastal high hazard area.

(8) The Agency shall prepare and provide the public with a finding and public explanation in accordance with § 9.12.

(9) The Agency shall ensure that the applicable mitigation requirements are fully implemented in accordance with § 9.11.

(c) At the time of disposal, for all disposed property, the Agency shall reference in the conveyance uses that are restricted under existing Federal, State and local floodplain management and wetland protection standards relating to flood hazards and floodplain and wetland values.

§ 9.15 Planning programs affecting land use.

The Agency shall take floodplain management into account when formulating or evaluating any water and land use plans. No plan may be approved unless it

(a) reflects consideration of flood hazards and floodplain management and wetlands protection; and

(b) prescribes planning procedures to implement the policies and requirements of the Orders and this regulation.

§ 9.16 Guidance for applicants.

(a) The Agency shall encourage and provide adequate guidance to applicants for agency assistance to evaluate the effects of their plans and proposals in or affecting floodplains and wetlands.

(b) This shall be accomplished primarily through amendment of all Agency instructions to applicants, e.g., program handbooks, contracts, application and agreement forms, etc., and also through contact made by agency staff during the normal course of their activities, to fully inform prospective applicants of:

(1) The Agency's policy on floodplain management and wetlands protection as set out in § 9.2;

(2) The decision-making process to be used by the Agency in making the determination of whether to provide the required assistance as set out in § 9.6;

(3) The nature of the Orders' practicability analysis as set out in § 9.9;

(4) The nature of the Orders' mitigation responsibilities as set out in § 9.11;

(5) The nature of the Orders' public notice and involvement process as set out in §§ 9.8 and 9.12; and

(6) The supplemental requirements applicable to applications for the lease or other disposal of Agency owned properties set out in § 9.14.

(c) Guidance to applicants shall be provided where possible, prior to the time of application in order to minimize potential delays in process application due to failure of applicants to recognize and reflect the provisions of the Orders and this regulation.

§ 9.17 Instructions to applicants.

(a) *Purpose.* In accordance with Executive Orders 11988 and 11990, the federal executive agencies must respond to a number of floodplain management and wetland protection responsibilities before carrying out any of their activities, including the provision of federal financial and technical assistance. The purpose of this section is to put applicants for Agency assistance on notice concerning both the criteria that it is required to follow under the Orders, and applicants' responsibilities under this regulation.

(b) *Responsibilities of Applicants.* Based upon the guidance provided by the Agency under § 9.16, that guidance included in the U.S. Water Resources Council's *Guidance for Implementing E.O. 11988,* and based upon the provisions of the Orders and this regulation, applicants for Agency assistance shall recognize and reflect in their application:

(1) The Agency's policy on floodplain management and wetlands protection as set out in § 9.2;

(2) The decision-making process to be used by the Agency in making the determination of whether to provide the requested assistance as set out in § 9.6;

(3) The nature of the Orders' practicability analysis as set out in § 9.9;

(4) The nature of the Orders' mitigation responsibilities as set out in § 9.11;

(5) The nature of the Orders' public and involvement process as set out in §§ 9.8 and 9.12; and

(6) The supplemental requirements for application for the lease or other disposal of Agency-owned properties, as set out in § 9.13.

(c) *Provision of supporting information.* Applicants for Agency assistance may be called upon to provide supporting information relative to the various responsibilities set out in paragraph (b) of this section as a prerequisite to the approval of their applications.

(d) *Approval of applications.* Applications for Agency assistance shall be reviewed for the recognition and reflection of the provisions of this regulation in addition to the Agency's existing approval criteria.

§ 9.18 Responsibilities.

(a) *Regional Directors' responsibilities.* Regional Directors shall, for all actions falling within their respective jurisdictions:

(1) Implement the requirements of the Orders and this regulation. Anywhere in §§ 9.2, 9.6 through 9.13, and 9.15 where a direction is given to the Agency, it is the responsibility of the Regional Director.

(2) Consult with the General Counsel regarding any question of interpretation concerning this regulation or the Orders.

(b) *Associate Directors' responsibilities.* Associate Directors/Administrators shall ensure that the offices/administrations under their jurisdiction:

(1) Implement the requirements of the Orders and this regulation. When a decision of a Regional Director relating to disaster assistance is appealed, the Associate Director for Disaster Response and Recovery may make determinations under these regulations on behalf of the Agency.

(2) Identify within ninety (90) days of the effective date of this regulation:

(i) The modifications that are necessary to make their existing floodplain management and wetlands protection procedures adequate to meet the directives of the Orders;

(ii) Which of these modifications should be made a part of this regulation;

(iii) Which of these modifications are to be included in program regulations other than this one; and

(iv) The steps being taken to prepare and implement these modifications.

(3) Are in full compliance with the Orders' provisions through the modification of their processes in accordance with (1) and (2), above.

(4) Prepare and submit to the Office of General Counsel reports to the Office of Management and Budget in accordance with section 2(b) of E.O. 11988 and section 3 of E.O. 11990. If a proposed action is to be located in a floodplain or wetland, any requests to the Office of Management and Budget for new authorizations or appropriations shall be accompanied by a report indicating whether the proposed action is in accord with the Orders and these regulations.

§ 9.19 Delegation of authority.

The Federal Insurance Administrator is authorized to exercise the power and authority of the Director, Federal Emergency Management Agency, with respect to the consultation function under Section 2(d) of Executive Order 11988 entitled "Floodplain Management," as amended by Section 5-207 of Executive Order 12148 entitled "Federal Emergency Management Agency." This delegation revokes and supersedes all prior delegations regarding authority under Section 2(d) of Executive Order 11988.

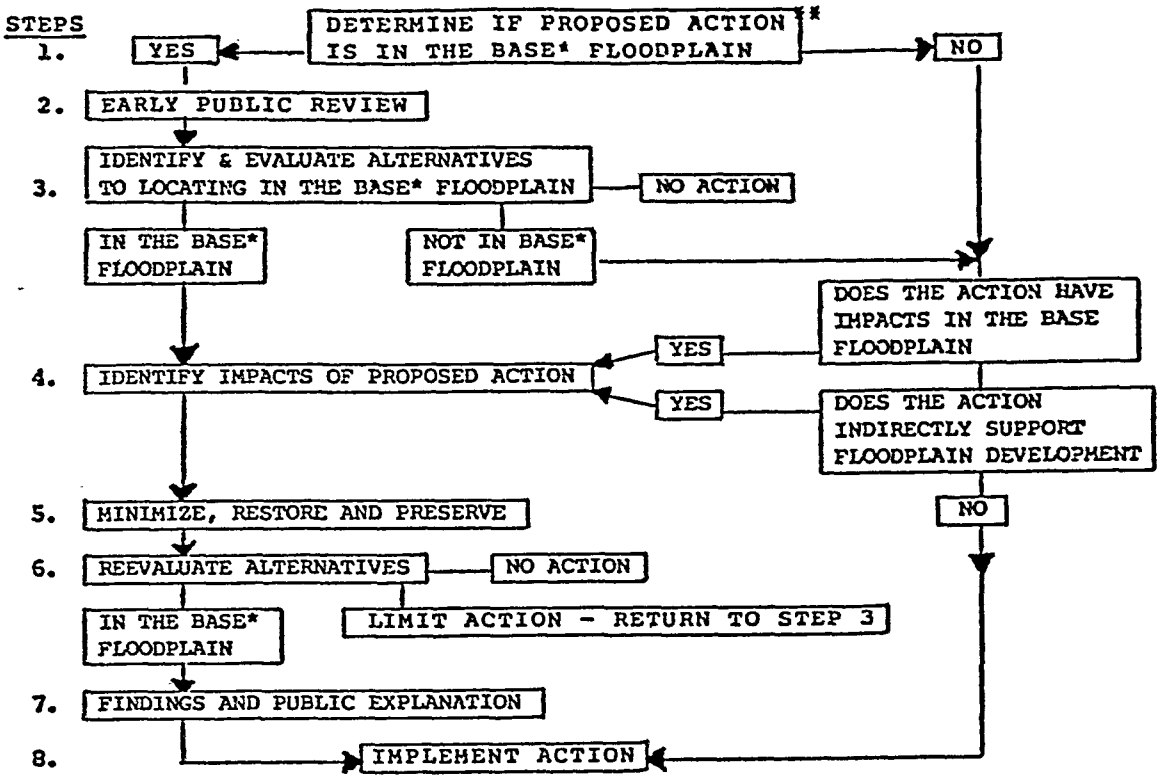
Dated: August 13, 1980.

John W. Macy, Jr.,

Director, Federal Emergency Management Agency.

BILLING CODE 6718-01-M

DECISION-MAKING PROCESS FOR E.O. 11988



* FOR CRITICAL ACTIONS SUBSTITUTE "500 YEAR" FOR "BASE" AND FOR WETLANDS DELETE "BASE FLOODPLAIN" AND SUBSTITUTE " WETLANDS".

** FOR WETLANDS "ACTION" INCLUDES "NEW CONSTRUCTION" ONLY.

[FR Doc. 80-27739 Filed 9-8-80; 8:45 am]
BILLING CODE 6716-01-C

44 CFR Part 9

Floodplain Management and Protection of Wetlands Regulations; Finding of No Significant Impact on the Environment

AGENCY: Federal Emergency Management Agency.

ACTION: Finding of no significant impact on environment of issuance of Federal Emergency Management Agency's final regulations implementing Executive Order 11988, Floodplain Management and Executive Order 11990, Protection of Wetlands.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 and the implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508), the Federal Emergency Management Agency (FEMA) has prepared an environmental assessment of the issuance by FEMA of final regulations implementing Executive Order 11988, Floodplain Management and Executive Order 11990, Protection of Wetlands.

ADDRESS: Copies of the environmental assessment are available for inspection at: Federal Emergency Management Agency, Room 802, 1725 I Street NW., Washington, DC 20472, Telephone: (202) 634–1990.

FOR FURTHER INFORMATION CONTACT: John Scheibel, Assistant to the General Counsel for Environmental Quality and Hazard Mitigation, Telephone: (202) 634–1990.

SUPPLEMENTARY INFORMATION: The assessment concludes that there will be no significant impact on the natural or manmade environment as a result of the issuance of the final regulations implementing Executve Orders 11988 and 11990. These regulations will restrict FEMA actions in or affecting floodplains or wetlands. At the very least, when FEMA does act in, or affect a floodplain or wetland, it will have to minimize harm to the floodplain or wetland environment. No action may be taken by FEMA in a floodplain or wetland unless such site is the only practicable location. In short, FEMA will take no action in or affecting floodplain or wetland which it would not have taken prior to issuance of the final regulations, and any action taken will minimize harm to the environment.

It is therefore found that there will be no significant impact on the environment caused by FEMA's issuance of the final regulations implementing Executive Order 11988 and Executive Order 11990. On this basis, an environmental impact statement will not be prepared.

Dated: August 13, 1980.

John W. Macy, Jr.,

Director.

[FR Doc 80-27740 Filed 9-8-80; 8:45 am]

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Federal Register

Tuesday
September 9, 1980

Part VII

Department of Health and Human Services

Food and Drug Administration

Anthelmintic Drug Products for Over-The-Counter Human Drugs; Establishment of a Monograph; Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 357

[Docket No. 79N-0378]

Anthelmintic Drug Products for Over-the-Counter Human Use; Establishment of a Monograph

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish conditions under which over-the-counter (OTC) anthelmintic drug products, which destroy pinworms, are generally recognized as safe and effective and not misbranded. The proposed rule, based on the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products, is part of the ongoing review of OTC drug products conducted by the Food and Drug Administration (FDA).

DATES: Comments by December 8, 1980; reply comments by January 7, 1981.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Bureau of Drugs (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In accordance with Part 330 (21 CFR Part 330), FDA received on June 23, 1978, a report of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products. Under § 330.10(a)(6) (21 CFR 330.10(a)(6)), the Commissioner of Food and Drugs issues (1) a proposed regulation containing the monograph recommended by the Panel, which establishes conditions under which OTC drug products are generally recognized as safe and effective and not misbranded (i.e., Category I); (2) a statement of the conditions excluded from the monograph because the Panel determined that they would result in the drugs not being generally recognized as safe and effective or would result in misbranding (i.e., Category II); (3) a statement of the conditions excluded from the monograph because the Panel determined that the available data are insufficient to classify these conditions under either (1) or (2) above (i.e., Category III); and (4) the conclusions and recommendations of the Panel. The Panel's conclusions on OTC anthelmintic drug products contained no Category III conditions.

The unaltered conclusions and recommendations of the Panel are issued to stimulate discussion, evaluation, and comment on the full sweep of the Panel's deliberations. The report has been prepared independently of FDA, and it represents the best scientific judgment of the Panel members, but does not necessarily reflect the agency's position on any particular matter contained in it. The Panel's findings appear in this document as a formal proposal to obtain public comment before the agency reaches any final decision on the Panel's recommendations. FDA, however, has reviewed those ingredients which the Panel recommends should be placed in Category I for OTC anthelmintic drug products and considers that the potential risks from the use of gentian violet as an OTC anthelmintic outweigh its benefits and, therefore, intends to classify this ingredient in Category II at the tentative final monograph.

The Panel reviewed the information available to it regarding the safety of gentian violet and acknowledged both a scarcity of acute toxicity data and "a high incidence of undesirable side effects associated with its clinical use in children." The Panel also reviewed reports regarding the potential carcinogenicity of gentian violet and recommended "that further testing be performed to resolve the carcinogenic concerns." According to the Panel, however, these reports were not convincing when weighed against the lack of evidence of adverse effects reported during the long marketing history of gentian violet. The Panel, therefore, concluded that gentian violet was safe when used as directed.

After reviewing the available data relevant to the genetic toxicity of gentian violet (Refs. 1 through 4), FDA concludes that in bacterial and mammalian cells in culture, gentian violet in cytotoxic (having a deleterious effect on cells) and clastogenic (causing genetic damage). In addition, it has been shown to damage deoxyribonucleic acid (DNA) in *Escherichia coli* in vitro (Refs. 1 and 4). Gentian violet did not induce gene mutations in the Ames Assay (Ref. 4), but this may be a result of its cytotoxicity masking any mutagenic effect. In cultured mammalian cells gentian violet induced various chromosomal anomalies (Ref. 2). In a chick embryo assay and an in vivo mouse bone marrow assay, gentian violet did not induce chromosomal aberrations; however, it was toxic to the chick embryos at high doses (Ref. 4). The decreased genetic toxicity of gentian violet in vivo may be attributed to the presence of inactivating enzyme systems, a lack of penetration of the compound to the genetic material of the cell, or both. It is not known whether such protective mechanisms would be effective in preventing chromosomal and other genetic damage in humans receiving therapeutic doses of gentian violet.

The genetic toxicity data cited above indicate that gentian violet apparently interacts with and damages DNA in cultured cells. Since current theories of chemical carcinogenesis include the premise that active forms of chemical carcinogens may interact with DNA to initiate the neoplastic process (Ref. 5), this evidence is also suggestive of a potential carcinogenic effect of gentian violet. Moreover, gentian violet belongs to a class of dyes collectively referred to as di- and triaminophenylmethanes. A few of these dyes are known animal carcinogens; two of them, auramine and magenta, have been implicated as human carcinogens (Refs. 6, 7, and 8). The provisional listing of Food, Drug, and Cosmetic Violet Number 1, another dye of this same structural class, was revoked in the Federal Register of April 10, 1973 (38 FR 9077) on the basis of its possible carcinogenic activity. Review of one study on gentian violet itself suggests that long-term feeding to rats results in the induction of hepatocellular carcinoma (Ref. 9).

FDA recognizes that a definitive conclusion regarding the carcinogenic activity of gentian violet cannot be reached at this time. On the basis of the available evidence, the agency has nominated gentian violet for study in the newly formed National Toxicology Program. Prior to this nomination it was on the list of compounds to be included in the National Cancer Institute's Carcinogenisis Bioassay Program. In the meantime, the evidence that gentian violet interacts with DNA and belongs to the same structural class as known carcinogens necessitates a conservative policy regarding human exposure. Such exposure should be limited to situations where a clear-cut and unique beneficial effect of the drug can be expected.

FDA appreciates the different considerations noted by the Panel between lifetime exposure to gentian violet resulting from consuming residues of the drug in edible tissues of treated animals and the infrequent, intermittent exposure occasioned by use as a pinworm remedy. Nevertheless, the quantities ingested for treatment of pinworms are very large compared with the amounts individuals consume as

residues in meat. Thus the cumulative dose of gentian violet resulting from its use as an OTC anthelmintic may be comparable to the total exposure through the food supply for individual users.

With regard to effectiveness, FDA believes that under ideal conditons when gentian violet is used at proper doses for the full recommended 10-day course of treatment, it is effective against pinworms. In practice, however, the Panel recognized that its undesirable side effects (gastrointestinal disturbances) result in a considerable degree of noncompliance which "would obviously reduce the overall effectiveness of this ingredient." Individuals who discontinue treatment because of such side effects may experience no benefit from the gentian violet. In addition, gentian violet is unique among anthelmintics in having a recommended 10-day course of treatment. The length of the treatment by itself could lead to relatively lower patient compliance in relation to agents which are effective as the result of a single treatment or two widely spaced treatments.

One of the standards for determining that a drug is effective for OTC use as described in § 330.10(a)(4) (21 CFR 330.10(a)(4)) is "general recognition of effectiveness." In a letter to the Bureau of Drugs dated December 27, 1977 (Ref. 10), the Committee on Drugs of the American Academy of Pediatrics concluded that "because of the high incidence of adverse gastrointestinal effects (up to 50 percent), potential toxicity, low compliance, relatively low efficiency, and because of the availability of superior anthelmintics—gentian violet has no role in the treatment of enterobiasis." This opinion argues against a conclusion that gentian violet is generally recognized as safe and effective.

Gentian violet is currently the only active ingredient marketed OTC for pinworms. Other anthelmintic active ingredients are available on a prescription basis. The Panel found that pyrantel pamoate is effective for this indication and does not induce gastrointestinal side effects. The Panel recommended that pyrantel pamoate be moved from prescription-only to OTC status for the treatment of pinworms. If the agency accepts this recommendation, consumers would continue to have a pinworm remedy available OTC. FDA has made a tentative determination to accept the Panel's recommendations on the OTC use of pyrantel pamoate. Any persons marketing such an OTC product prior to the publication in the Federal Register of a final monograph will do so subject to the risk the agency may adopt a different position as detailed in § 330.13 (21 CFR 330.13).

FDA concludes that the rather modest health benefits associated with the continued OTC availability of gentian violet as an anthelmintic are outweighed by the risks, which are potentially quite serious. The agency invites specific comment on its intent to classify gentian violet in Category II at the tentative final monograph.

References

(1) Rosenkranz, H. S., and H. S. Carr, "Possible Hazard in Use of Gentian Violet," *British Medical Journal*, 3:702–703, 1971.

(2) Au, W., et al., "Cytogenetic Toxicity of Gentian Violet and Crystal Violet on Mammalian Cells in Vitro," *Mutation Research*, 58:269–276, 1978.

(3) Hsu, T. C., et al., "Cytogenetic Assays of Chemical Clastogens using Mammalian Cells in Culture," *Mutation Research*, 45:233–247, 1977.

(4) Au, W., et al., "Further Study of the Genetic Toxicity of Gentian Violet," *Mutation Research*, 66:103–112, 1979.

(5) Magee, P. N., "Extrapolation of Cellular and Molecular Level Studies to the Human Situation," *Journal of Toxicology and Environmental Health*, 2:1415–1424, 1977.

(6) Williams, M. H. C., and G. M. Bonser, "Induction of Hepatomas in Rats and Mice Following the Administration of Auramine," *British Journal of Cancer*, 16:87–92, 1962.

(7) International Agency for Research on Cancer, IARC Monographs on the Evaluation of Carcinogenic Risk of Chemicals to Man, Lyon, France, Vol. 4, pp. 57–64, 1974.

(8) Arcos, J. C., and M. F. Argus, "Chemical Induction of Cancer, Structural Basis and Biological Mechanisms," Academic Press, New York, Vol. II B, pp. 17–23, 1974.

(9) Weinberger, M. A., "Review of Slides from Old FDA Chronic Oral Toxicity Study with Gentian Violet," attached to FDA Memorandum dated February 1, 1978, in Panel Administrator's File (OTC Volume 17FPAII).

(10) Letter from Segal, S., to M. Freeman dated December 27, 1977, in Panel Administrator's File (OTC Volume 17FPAII).

The agency has reviewed the general labeling recommendations of the Panel for all OTC anthelmintic drug products. In particular, the Panel has recommended the following label warning: "Do not take this product if you are pregnant or ill, without first consulting a physician." The agency advises that this recommendation is inconsistent with the required labeling for pyrantel pamoate which is currently available only by prescription. The agency has further reviewed the Panel's report and concludes that there are insufficient data at this time to require a pregnancy warning for pyrantel pamoate. It is the agency's position that such a warning should only be required when medical and scientific evidence has demonstrated such need for the safe use of a product. Based upon the available data at this time, it is the agency's intent not to include such a pregnancy warning in the Tentative Final Order.

After FDA has carefully reviewed all comments submitted in response to both the Panel's and the agency's proposals, the agency will issue a tentative final regulation in the Federal Register to establish a monograph for OTC anthelmintic drug products.

In accordance with § 330.10(a)(2) (21 CFR 330.10(a)(2)), the Panel and FDA have held as confidential all information concerning OTC anthelmintic drug products submitted for consideration by the Advisory Review Panel. All this information will be put on public display at the office of the Hearing Clerk, Food and Drug Administration, after October 9, 1980, except to the extent that the person submitting it demonstrates that it still falls within the confidentiality provisions of 18 U.S.C. 1905 or section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)). Requests of confidentiality should be submitted to William E. Gilbertson, Bureau of Drugs (HFD–510) (address given above).

Based upon the conclusions and recommendations of the Panel, FDA proposes the following:

1. That the conditions included in the monograph, under which the drug products would be generally recognized as safe and effective and not misbranded (monograph conditions), be effective 30 days after the date of publication of the final monograph in the Federal Register.

2. That the conditions excluded from the monograph either because they would cause the drug to be not generally recognized as safe and effective or to be misbranded or because the available data are insufficient to support the inclusion of such conditions in the monograph (nonmonograph conditions) be eliminated from OTC drug products effective 6 months after the date of publication of the final monograph in the Federal Register, regardless of whether further testing is undertaken to justify their future use.

FDA published in the Federal Register of May 13, 1980 (45 FR 31422) its proposal to revise the OTC procedural regulations to conform to the decision in *Cutler* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979). The Court in *Cutler* held that the OTC drug regulations (21 CFR 330.10) are unlawful to the extent that they authorize the marketing of Category III drugs after a final monograph. Accordingly, the proposed

regulations delete this provision and provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process, before the establishment of a final monograph (45 FR 31442).

Although it was not required to do so under *Cutler*, FDA has also decided to stop using the terms "Category I," "Category II," and "Category III" at the final monograph stage in favor of the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). Any OTC drug product containing a "nonmonograph conditions" will be subject to regulatory action after the establishment of a final monograph. This document, however, retains the concepts of Categories I, II, and III because that was the framework in which the Panel conducted its evaluation of the data.

A proposed review of the safety, effectiveness, and labeling of all OTC drugs by independent advisory review panels was announced in the Federal Register of January 5, 1972 (37 FR 85). The final regulations providing for this OTC drug review under § 330.10 were published and made effective in the Federal Register of May 11, 1972 (37 FR 9464). In accordance with these regulations, a request for data and information on all active ingredients used in OTC miscellaneous internal drug products was issued in the Federal Register of November 16, 1973 (38 FR 31696). In the Federal Register of August 27, 1975 (40 FR 38179) a further notice supplemented the initial notice with a detailed list of ingredients which included anthelmintic ingredients.

The Commissioner appointed the following Panel to review the data and information submitted and to prepare a report under § 330.10(a)(1) and (5) on the safety, effectiveness, and labeling of the ingredients in those products:

John W. Norcross, M.D., Chairman
Ruth Eleanor Brown, R.Ph. (resigned May 1976)
Elizabeth C. Giblin, Ed.D.
Richard D. Harshfield, M.D.
Theodore L. Hyde, M.D.
Claus A. Rohweder, D.O.
Samuel O. Thier, M.D. (resigned November 1975)
William R. Arrowsmith, M.S. (appointed March 1976)
Diana F. Rodriguez-Calvert, Pharm. D. (appointed July 1976)

Representatives of consumer and industry interests served as nonvoting members of the Panel. Eileen Hoates, nominated by the Consumer Federation of America, served as the consumer liaison until September 1975, followed by Michael Schulman, J. D. Francis J. Hailey, M.D., served as the industry liaison, and in his absence John Parker, Pharm. D., served. Dr. Hailey served until June 1975, followed by James M. Holbert, Sr., Ph. D. All industry liaison members were nominated by the Proprietary Association.

The following FDA employees assisted the Panel: Armond M. Welch, R. Ph., served as the Panel Administrator. Enrique Fefer, Ph. D., served as the Executive Secretary until July 1976, followed by George W. James, Ph. D., until October 1976, followed by Natalia Morgenstern until May 1977, followed by Arthur Auer. Joseph Hussion, R. Ph., served as the Drug Information Analyst until July 1976, followed by Anne Eggers, R. Ph., M.S., until October 1977, followed by John R. Short, R. Ph.

In order to expand its medical and scientific base, the Panel called upon the following consultants for advice in areas which required particular expertise:

Carol R. Angle, M.D. (pediatrics)
Jay M. Arena, M.D. (pediatrics)
William A. MacColl, M.D. (pediatrics)
Ralph B. D'Agostino, Ph. D. (statistics)

The Advisory Review Panel on OTC Miscellaneous Internal Drug Products was charged with the review of many categories of drugs. Due to the large number of ingredients and varied labeling claims, the Panel decided to review and publish its findings separately for several drug categories and individual drug products. The Panel presents its conclusions and recommendations for anthelmintic drug products in this document. The review of other categories of miscellaneous internal drug products will be continued by the Panel, and its findings will be published periodically in future issues of the Federal Register.

The Panel was first convened on January 13, 1975 in an organizational meeting. Working meetings were held on the following dates (the dates of those meetings which dealt with the topic of this document are in italics): February 23 and 24, March 23 and 24, April 27 and 28, June 22 and 23, September 21 and 22, and *November 16 and 17*, 1975; February 8 and 9, *March 7 and 8, April 11 and 12, May 9 and 10, July 11 and 12*, and *October 10 and 11*, 1976; *February 20 and 21*, April 3 and 4, *May 15 and 16, July 9, 10, and 11, October 15, 16, and 17*, and *December 2, 3, and 4, 1977; January 28, 29, and 30, March 10, 11, and 12, May 5, 6, and 7*, and *June 23*, 1978.

The minutes of the Panel meetings are on public display in the office of the Hearing Clerk (HFA-305), Food and Drug Administration (address given above).

The following individuals were given an opportunity to appear before the Panel to express their views on OTC anthelmintic drug products either at their own or at the Panel's request:

Saul Bader, Ph. D.
Harold W. Brown, M.D.
Hugh C. Dillon, M.D.
Albert Eckian, M.D.
William Fiedelman, M.D.
George Goldstein, M.D.
Michael Hospador, Ph. D.
Harold Howes, Ph. D.
Edgar Martin, M.D.
Vernon W. Mayer, Ph. D.
John Penicnak, Ph. D.
Roger Sachs, M.D.

No person who so requested was denied an opportunity to appear before the Panel.

The Panel has thoroughly reviewed the literature and the various data submissions, has listened to additional testimony from interested persons, and has considered all pertinent data and information submitted through June 23, 1978 in arriving at its conclusions and recommendations for OTC anthelmintic drug products.

In accordance with the OTC drug review regulations (21 CFR 330.10), the Panel considered OTC anthelmintic drug products with respect to the following three categories:

Category I. Conditions under which OTC anthelmintic drug products are generally recognized as safe and effective and are not misbranded.

Category II. Conditions under which OTC anthelmintic drug products are not generally recognized as safe and effective or are misbranded.

Category III. Conditions for which the available data are insufficient to permit final classification at this time.

I. Submission of Data and Information

Pursuant to the notices published in the Federal Register of November 16, 1973 (38 FR 31696) and August 27, 1975 (40 FR 38179) requesting the submission of data and information on OTC miscellaneous internal drug products, the following firms made submissions related to anthelmintic drug products:

A. Submissions by Firms

Firms and Marketed Products

Glenbrook Laboratories, New York, NY 10016, Jayne's P-W Vermifuge (for Children under 6 years), Jayne's P-W Vermifuge (for adults and children 6 years and older).

Pfizer Pharmaceuticals, New York, NY 10017, Pyrantel Pamoate Oral Suspension.

Scientific Associates, Inc., St. Louis, MO 63123, Piperazine Citrate Syrup, U.S.P.

B. Ingredients Reviewed by the Panel

Labeled Ingredients Contained in Marketed Products Submitted to the Panel.

Gentian violet
Piperazine citrate
Pyrantel pamoate

C. Classification of Ingredients

1. *Active ingredients.*

Gentian violet
Piperazine citrate
Pyrantel pamoate

2. *Inactive ingredients.*

None.

D. Referenced OTC Volume Submissions

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call for data notices published in the Federal Register of November 16, 1973 (38 FR 31696) and August 27, 1975 (40 FR 38179). All of the submitted information included in these volumes, except for those deletions made in accordance with the confidentiality provisions set forth in § 330.10(a)(2), will be put on public display after October 9, 1980, in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

II. General Statements and Recommendations

A. Definition of Terms

For the purposes of this document, the Panel adopted the following definitions:

1. *Anthelmintic.* An agent that is destructive to pinworms.

2. *Children.* Persons from 2 to under 12 years of age.

3. *Enuresis.* Urinary incontinence during sleep, i.e., bed wetting.

4. *Infants.* Persons under 2 years of age.

5. *Perianal.* In the region of the anus.

6. *Pruritus ani.* Itching in the region of the anus.

7. *Vermifuge.* Anthelmintic.

B. General Discussion

The Panel is aware that the term "anthelmintic" refers to therapeutic agents that are destructive to all worms. However, only the pinworm, *Enterobius vermicularis,* was considered in this document since it is the only intestinal worm which is amenable to self-diagnosis and treatment with an OTC drug product.

The Panel is also aware that another type of worm, *Ascaris lumbricoides* (large roundworm), is treatable by some of the same drug products which may be used for the treatment of pinworms; but since the *Ascaris* infestation can be much more serious, the Panel concludes that its diagnosis and treatment should be under the supervision of a physician.

The pinworm, *Enterobius vermicularis,* is the most common parasitic worm afflicting man. It occurs in all geographical areas within the United States, urban and rural. There is little socioeconomic difference in its incidence. Man is the only host for this usually benign but frequently irritating parasite. Infestation occurs more often in children than in adults.

Pinworms occur in humans only after pinworm eggs are ingested, and the adult worms live in the entire intestinal tract (the cecum, large and small bowel). When eggs are ingested, they hatch and mature in 15 to 28 days in the large bowel, and the worms live for 28 to 42 days (Ref. 1). During the night the female worm travels through the anus where it deposits approximately 11,000 eggs (Ref. 2).

Transmission of pinworms to the same or another host may be accomplished by several methods. Reinfestation can occur by transferring the eggs from the anal site to the mouth. The eggs can be harbored under the fingernails and transmitted to the mouth, where they are ingested. Pinworm eggs can contaminate food and drink and can survive for long periods of time without any host. Eggs can be present on clothing, bedding, bathroom fixtures, and other objects and can be readily transferred by handling the contaminated objects. The eggs are resistant to household disinfectants and can hatch after 2 to 3 weeks at room temperature (Ref. 2).

Most pinworm infestations cause no symptoms. Of the symptoms which do occur, the most frequent is perianal itching which may extend to the vulva in females. These symptoms are very disturbing to children and adults alike. It is occasionally the cause of secondary conditions, such as insomnia, enuresis, irritability, and secondary infection (due to localized scratching). Vague complaints of nausea and other gastrointestinal symptoms have also been associated with pinworm infestation.

It is noted in the literature that other complications of pinworm infestation such as appendicitis and vaginitis occur rarely (Ref. 3).

Diagnosis of pinworm infestation can be accomplished by either of two methods. One method is to cover the end of a swab or tongue depressor with scotch tape (sticky side out) and apply this end to the perianal area. The presence or absence of eggs is confirmed by examining the tape under the microscope. Although collection of eggs can be done at home, inspection and evaluation must be done in a laboratory or physician's office.

The other method of detection and identification for the consumer is to visually inspect the anal site (usually with a flashlight an hour or so after the child has gone to bed) for the presence of the female pinworm, which is one-fourth to one-half inch (8 to 13 millimeters (mm)) in length, and to see the worm actually move.

The primary goal of treating pinworm infestation is to completely eradicate the parasite and its eggs from the entire household. The eggs are extremely light in weight and can be airborne very easily and dispersed throughout the house.

The Panel is aware of a concern regarding the practice of treating all members of the household, and that the potential exists for the overuse of pinworm medication. In other words, those persons without confirmed infestations would also be recipients of therapy whether or not they exhibited the infestation or the symptoms of infestation.

The Panel believes that this practice will not present any hazard to those using pinworm medications, since the ingredients must be safe for general consumer use (when used as directed) in order to be marketed as an OTC drug product. Therefore, the Panel and its consultants concur with the widely accepted medical practice of treating all members of the household to eliminate the pinworm once one infested member has been identified. Such treatment extends to all members of a household except infants under two years of age, children weighing less than 25 pounds, or persons who are ill or pregnant, who should take such treatment only when so advised by a physician. If there is any question regarding the identification of the pinworm or the therapy for any member(s) of the household, a physician should be consulted before beginning treatment.

The Panel is aware of other pinworm drug products in current prescription status, and it urges FDA and drug manufacturers to review these new drug applications (NDA's) with an eye towards switching from prescription to OTC status, when appropriate.

References

(1) OTC Volume 170068.

(2) Hebeler, J. R., "Pinworms: A Nocturnal Nuisance," *Continuing Education,* pp. 1-3, February 1975.

(3) "Parasitic Infections," *in* "Textbook of Pediatrics," 10th Ed., Edited by Vaughan, V. C., R. J. McKay, and W. E. Nelson, W. B. Saunders Co., Philadelphia, pp. 754–755, 1975.

C. Labeling

The Panel believes that all labeling should be clear, concise, and easily read and understood by most consumers so that the medication can be properly used. The Panel has followed these concepts in the development of the Category I labeling. The Panel is also concerned about the size and color of the print used in the labeling of these and all drug products, and it recommends that the industry make the necessary effort to design labeling which can be read easily by consumers.

Due to the complexity of the pinworm identification, the dosage involved in treatment, and the hygiene procedures to be followed to reduce reinfestation, the Panel recommends that the packaging of OTC pinworm drug products contain a package insert for the consumer. This insert should contain: (1) a detailed description of how to find and identify the pinworm; (2) commentary on the life cycle of this parasite; (3) the ways in which it may spread from person to person and hygienic procedures to curtail such spreading; (4) all other Category I labeling information contained in the monograph.

The indications for use should be simply and clearly stated; the directions for use should provide the user with enough information for the safe and effective use of the product; and the label should include a statement that the product is only intended to eradicate pinworm infestation and should not be used to treat other types of worm infestation. Instructions for product usage (e.g., "Shake Well Before Using") should be prominently displayed on all appropriate package labeling.

The Panel feels that any statements suggesting prophylactic use of an anthelmintic drug product are entirely unwarranted and should not appear on any OTC anthelmintic labeling.

The Panel concurs with the current OTC labeling regulation dealing with warning statements (21 CFR 330.1(g)) and recommends that labeling for anthelmintic drug products contain a "Warnings" section which contains the following warnings in addition to any drug-specific warnings: "Keep this and all drugs out of the reach of children" and "In case of accidental overdose, seek professional assistance or contact a poison control center immediately."

Since both gentian violet and pyrantel pamoate have the potential for causing gastrointestinal side effects, the Panel has recommended a warning alerting the consumer to discontinue its use and consult a physician if these side effects occur. OTC pinworm medication is not recommended for infants, children who weigh less than 25 pounds, or persons who are ill or pregnant unless advised otherwise by a physician.

Since OTC drug products can be purchased by anyone, it is the view of the Panel that the public generally does not regard these products as medicines which, if used improperly, can result in injurious or potentially serious consequences. The public needs to be continually alerted to the idea that these products, like all medicine, carry some risk and should be treated with respect. The consumer should also be informed of any possible signs of known toxicity or any symptom requiring discontinuation of the use of the drug so that appropriate steps may be taken before more severe consequences become apparent.

The Panel believes that the label should contain a listing of all ingredients and that it should clearly indicate which are active and which are inactive. Active ingredients must be listed by their established names, and the label should state the quantity of the active ingredient in the recommended dosage.

III. Anthelmintic Drug Products

A. Category I Conditions

The following are Category I conditions under which anthelmintic drug products are generally recognized as safe and effective and not misbranded.

1. *Category I active ingredients.*

Gentian violet.

Pyrantel pamoate

a. *Gentian violet.* The Panel concludes that gentian violet (also known as methylrosaniline chloride) is safe and effective for OTC use as an anthelmintic when used as specified in the dosage and labeling sections below.

(1) *Safety.* Very little data are available on the acute toxicity of gentian violet, but the Panel has found the following information. Hodge et al. (Ref. 1) reported that the administration of gentian violet in propylene glycol resulted in a 7-day oral LD_{50} (median lethal dose) of 600 milligrams/kilogram (mg/kg) for mice and a 7-day oral LD_{50} of 250 mg/kg for rats. For guinea pigs and cats, a propylene glycol solution of gentian violet was used intraperitoneally, and results showed an approximate lethal dose of 100 to 150 mg/kg. In rabbits the intraperitoneal adminsitration of a propylene glycol solution of gentian violet gave a lethal dose from 125 to 250 mg/kg. The minimum lethal dose in rabbits given gentian violet orally in capsules for 6 days was 22 mg/kg daily for a total dose of 132 mg/kg. In two dogs treated orally with enteric-coated tablets of gentian violet for 18 days, one dog died at 40.1 mg/kg daily, whereas the second dog survived a dose of 35.4 mg/kg daily. Since the human dose is 2 mg/kg daily for a 10-day treatment, the authors concluded that the total dose would be "* * * less than one-fifth the [acute] lethal doses for the various species, so that the margin of safety seems adequate in consideration of the conditions of use."

In clinical use, the side effects of nausea, vomiting, abdominal pain, or diarrhea may occur in as many as one-third of the children treated with gentian violet (Refs. 1 and 2). Although the Panel acknowledges a high incidence of undesirable side effects affecting patient compliance, it considers gentian violet to be generally recognized as safe when properly used as an OTC anthelmintic in humans.

The Panel is aware of both the recent concern that gentian violet may be a carcinogen and the recently published and unpublished data regarding its potential carcinogenicity (Refs. 3 through 6). The Panel recognizes the propriety of the FDA Bureau of Foods' position that the present weight of the evidence regarding the toxicity of gentian violet indicates that gentian violet may be carcinogenic and that the question of carcinogenicity cannot be unequivocally answered based on the available data. No decision on the safety of gentian violet residues in the edible parts of animals can be made until appropriate data resolving the question of carcinogenicity are submitted to FDA.

The Panel was also made aware of concerns expressed by a physician from the Division of Anti-Infective Drug Products of the Bureau of Drugs about the continued OTC status of gentian violet, namely, that more effective and better-tolerated drugs for treating pinworm infestations are available and that questions regarding the carcinogenic, mutagenic, and embryotoxic potential of gentian violet have not been resolved.

The Panel has considered the concerns of both the Bureau of Foods and the Division of Anti-Infective Drug Products. However, the Panel recognizes that safety considerations regarding the short-term use of a compound as a drug in humans differ significantly from safety considerations regarding low-level, long-term human exposure to that compound in food. In this context, the data on the potential carcinogenicity of

gentian violet remain a concern but do not preclude the short-term, effective use of gentian violet as an anthelmintic in humans. The Panel recommends that further testing be performed to resolve the concerns about carcinogenicity associated with gentian violet. Because there is no conclusive proof that gentian violet is a carcinogen, the Panel concludes that it is safe for OTC use as an anthelmintic when used as directed.

The Panel was also made aware of one report that gentian violet may cause contact sensitization (Ref. 7). The Panel knows of no other such reports and concludes that the demonstrated benefits of gentian violet as an OTC anthelmintic in humans outweigh the risks of contact sensitization.

In evaluating the safety of gentian violet, the Panel was made aware of the reported high incidence of gastrointestinal distress associated with ingestion of the drug. Although it is generally recognized as an effective anthelmintic, therapeutic doses of the drug may produce side effects such as nausea, vomiting, diarrhea, and abdominal pain as a result of a direct irritant effect of the drug on the mucosa of the stomach and small intestine (Ref. 8). The Panel concludes that while these side effects are annoying, they are not deemed to be dangerous.

The Panel recommends that gentian violet for use as an anthelmintic be marketed only as an enteric-coated tablet. By delaying release of the drug until it reaches the small intestine, the incidence and severity of direct gastrointestinal irritation may be lessened, and patient compliance may be improved.

(2) *Effectiveness.* Gentian violet is an aniline dye that has been used for many years as an OTC anthelmintic. It is currently the only anthelmintic available for OTC use. Because of a lack of interest in the ingredient, very few studies have been performed to demonstrate its effectiveness in treating pinworm infestations. The effectiveness studies which have been performed were conducted 25 to 40 years ago under considerably less stringent standards than are applicable today, but the results are still informative.

In one study (Ref. 9) conducted on 20 children who were given gentian violet orally as sugar-coated tablets in doses of 11 mg (for every year of life)/day for a 7-day treatment (and repeated after 7 days), 70-percent effectiveness was demonstrated.

Another study (Ref. 2) performed on children and adults resulted in 92-percent effectiveness. In this study enteric-coated gentian violet tablets were administered to children in doses of 10 mg (for every year of life)/day and to adults in a dose of 64 mg before meals three times daily. Of the 122 patients who completed the treatment (36 did not), 107, of whom 85 were 16 years of age or younger, were given the treatment for 10 days, while the remaining individuals (all children) received the drug over a period of 8 days, rested 7 days, and then repeated the 8-day treatment. A total of 112 patients of the 122 showed no pinworm eggs on post-treatment swab examinations.

As noted earlier, about one-third of the patients treated with gentian violet experience adverse reactions, and these reactions result in a considerable incidence of noncompliance with the 10-day course of treatment. In the study cited immediately above (Ref. 2), there was a 23-percent dropout rate. The low compliance would obviously reduce the overall effectiveness of this ingredient, but the effectiveness rate for those who complete the 10-day course of therapy is sufficient enough for the Panel to conclude that gentian violet is generally recognized as effective when used as directed.

(3) *Dosage.* The usual daily dose of gentian violet for adults and children is 2 mg/kg daily divided into two or three administrations as enteric-coated tablets (Ref. 10). Treatment should continue for a complete 10-day course with a maximum of 150 mg/day (Ref. 11). The Panel believes that gentian violet should not be used for children who are less than 2 years of age, who weigh less than 25 pounds, or those who cannot swallow the tablet whole, except under the supervision of a physician. The manufacturer should include dosage information on the labeling in such a manner that persons can readily determine how much of the drug product to take in relation to their body weight.

(4) *Labeling for gentian violet.* The Panel recommends that in addition to the Category I labeling recommended for OTC anthelmintic drug products in general, the labeling for gentian violet should contain the following warning, direction and other information. (See part III paragraph A.2 below—Category I labeling.)

(a) *Warnings.* "Because of the staining properties of this preparation, do not bite, chew, or suck the tablets."

(b) *Directions.* "Tablets should be swallowed whole and taken with water."

(c) *Other information.* (i) "If vomiting occurs with this medication, the vomitus may be colored purple."

(ii) "This medication will cause your stools to be colored purple. This is harmless."

References

(1) Hodge, H. C., et al., "Acute Oral Toxicity of Methylrosaniline Chloride," *Toxicology and Applied Pharmacology*, 22:1–5, 1972.

(2) Wright, W. H., and F. J. Brady, "Studies on Oxyuriasis," *Journal of the American Medical Association*, 114:861, 1940.

(3) Rosenkranz, H. S., and H. S. Carr, "Possible Hazard in Use of Gentian Violet," *British Medical Journal*, 3:702–703, 1971.

(4) Au, W., et al., "Cytogenetic Toxicity of Gentian Violet on Mammalian Cells in Vitro," *Mutation Research*, 58:269–276, 1978.

(5) Hsu, T. C., et al., "Cytogenetic Assays of Chemical Clastogens Using Mammalian Cells in Culture," *Mutation Research*, 45:233–247, 1977.

(6) Weinberger, M. A., "Review of Slides from Old FDA Chronic Oral Toxicity Study with Gentian Violet," attached to FDA Memorandum dated February 1, 1978, in Panel Administrator's File (OTC Volume 17FPAII).

(7) Bielicky, T., and M. Novak, "Contact-Group Sensitization to Triphenylmethane Dyes," *Archives Dermatology* 100:540–543, 1969.

(8) Gleason, M. N., et al., "Clinical Toxicology of Commercial Products," 3d Ed., The Williams and Wilkins Co., Baltimore, p. 73, 1969.

(9) White, R. H. R., and O. D. Steinden, "Piperazine in the Treatment of Threadworms in Children," *British Medical Journal*, 2:755–757, 1953.

(10) Shirkey, H. C., "Pediatric Therapy," 4th Ed., The C. V. Mosby Co., St. Louis, p. 1106, 1972.

(11) OTC Volume 170024.

b. *Pyrantel pamoate.* The Panel concludes that pyrantel pamoate is safe and effective for OTC use as an anthelmintic when used as specified in the dosage and labeling sections below.

(1) *Safety.* The safety of pyrantel pamoate seems well established because of the paucity of adverse reactions reported since its introduction as a prescription drug in 1972 (Ref. 1). There have been no reports of significant toxicity due to accidental overdosage.

The Panel has evaluated data submitted by a manufacturer and considers it of sufficient importance to this document to be included in toto (Ref. 2):

Pyrantel pamoate at doses of 50, 250, and 500 mg/kg/day was administered to the rat for 30 days without adverse symptoms. Postmortem examination and histologic examination revealed no morphologic changes attributable to the treatment.

In another study, rates were given 100, 300, or 600 mg/kg/day for 13 weeks. Apart from a slight reduction in growth rate and food consumption in rats receiving 600 mg/kg/day there were no adverse symptoms observed. No gross

or histopathologic changes attributable to the drug were observed.

An inconsistent hepatotoxicity has been observed in dogs. Male beagle dogs were given 500, 250, or 50 mg/kg/day for 30 days. Transaminase elevations were seen in 2 (out of 4) which received the top dose and liver changes were observed histologically in one. In an identical, but separate, study in female dogs these same effects appeared at both 500 and 250 mg/kg/day. In a third study in male and female beagle dogs serum transaminases and liver biopsy specimens were normal after 14 and 30 days of 250 or 50 mg/kg/day.

Pyrantel pamoate administered to beagle dogs in daily doses of 100, 300, or 600 mg/kg for 13 weeks caused no toxic symptoms or effect on body weight. In three of four dogs receiving 300 mg/kg and two of four receiving 600 mg/kg, transaminase levels were raised after 13 weeks' treatment. A slight, apparently dose-dependent lymphocytosis was observed in dogs after 13 weeks. There were no histopathologic changes attributable to the drug. It should be noted that these effects were not observed in dogs which were given the better absorbed tartrate salt of pyrantel.

Those dose levels represent approximately 27 times the recommended dose in man of 11 mg/kg [5 milligrams/pound (mg/lb)].

Reproductive and teratologic studies were carried out to investigate the effects of pyrantel pamoate on fertility, pregnancy, the developing fetus, and the newborn in rats and rabbits, These consisted of reproduction studies in three parts, all according to the protocol recommended in the 1966 FDA Guidelines.

Pyrantel pamoate at dose levels of 260 or 25 mg/kg/day had no effect on fertility, reproduction, organogenesis, parturition, or lactation in rats or organogenesis in rabbits.

In clinical studies of children given a single dose of 5 mg/lb, there was a documented incidence of transient elevation of the serum glutamic-oxaloacetic transaminase (SGOT) in 1.2 percent of 571 subjects from several institutions. In undocumented cases without baseline values, the SGOT was mildly elevated at 24 or 48 hours after therapy in 20 percent of 155 children (Ref. 2).

In humans side effects due to pyrantel pamoate (as the suspension) at the recommended doses of 5 mg/lb (base activity) of body weight have occurred infrequently, and even at high doses (up to 3,500 mg) the side effects were still infrequent (Ref. 2). The most frequently reported side effects were specific to the gastrointestinal tract and may be related to the clearing of worms (Ref. 2). The most frequent gastrointestinal disturbances are nausea, vomiting, abdoiminal cramps, and diarrhea. Other side effects encountered include headache, dizziness, anorexia, drowsiness, and rashes.

Information on the absorption of pyrantel pamoate is incomplete. The Panel is aware of one study in which single oral doses of 5 mg/lb yielded low plasma levels of less than 0.05 to 0.13 microgram/millimeter (μg/ml) of unchanged drug. This study of 14 subjects showed a maximum absorbance (urinary excretion) of 6.7 percent. This low level of absorption may contribute to the paucity or reported adverse reactions (Ref. 3).

During an oral presentation at a Panel meeting, the Panel was reminded of some adverse reactions which have previously been reported (Ref. 4), including one case each of ototoxicity, optic neuritis, and hallucinations with confusion and paresthesias. The Panel considered this information in depth and concluded that, in the absence of information to support cause and effect, these reports were not evidence of a pyrantel pamoate reaction.

The Panel has reviewed the information available to it (Refs. 5 and 6) regarding an incident in Egypt in which 12 of 37 children treated with pyrantel pamoate developed severe reactions and two children died. In view of the scanty information available now or likely to be available in the future and considering the vast experience with pyrantel pamoate, which is estimated at over 100 million persons treated without any reported incidence of death, the Panel concludes that these reactions and deaths were not due to pyrantel pamoate.

The Panel concludes that pyrantel pamoate is generally recognized as safe of OTC human use an an anthelmintic in the dosages discussed below.

(2) *Effectiveness.* Pyrantel pamoate works like succinylcholine chloride in that it depolarizes muscle thereby paralyzing the worm's contractile hold on the intestinal wall. Both the pinworm *(Enterobius vermicularis)* and the large roundworm *(Ascaris lumbrioides)* are particularly sensitive to the effect of the drug.

Numerous studies document the high degree of effectiveness of pyrantel pamoate. Pitts and Migliardi (Ref. 3) determined that the overall effectiveness in three groups totalling 1,506 patients (mainly children) was 97.2 percent. The dose used was a single dose of 5 mg/lb of body weight.

Another study, by Sanati and Ghadirian (Ref. 7), determined that pyrantel pamoate was effective in 95 percent of 120 patients. Treatment consisted of a single dose of 10 mg/kg of body weight. One week after the treatment, 114 of the 120 patients had no sign of pinworm infestation. Of 30 patients used as controls, there were no instances of eradication of the pinworm infestation.

(3) *Dosage.* The Panel recommends the usual single dose of pyrantel pamoate in suspension of 5 mg/lb or 11 mg/kg of body weight, not to exceed 1 gram (g) (Refs. 8 and 9). This dose is expressed in terms of the active moiety or pyrantel pamoate and is applicable to both pediatric and adult populations. The Panel recommends that the manufacturer include dosage information in the labeling in such a manner that the user can readily determine how much of the drug product to take in relation to his or her body weight.

(4) *Labeling for pyrantel pamoate.* The Panel recommends that the Category I labeling for OTC anthelmintic drug products be used for pyrantel pamoate. (See part III. paragraph A.2. below—Category I labeling.)

References

(1) OTC Volume 170161.

(2) OTC Volume 170033.

(3) Pitts, N. E., and J. R. Migliardi, "Antiminth (Pyrantel Pamoate)—The Clinical Evaluation of a New Broad-Spectrum Anthelmintic," *Clinical Pediatrics,* 13:87–91, 1974.

(4) Summary minutes of the OTC Miscellaneous Internal Drug Products Panel 21st meeting, March 10, 11, and 12, 1976.

(5) OTC Volume 170162.

(6) OTC Volume 170160.

(7) Sanati, S., and E. G. Ghadirian, "Treatment of Enterobiasis with Pyrantel Pamoate in Iran," *Journal of Tropical Medicine and Hygiene,* 74:160–161, 1971.

(8) Tudor, R. B., "Pediatrics—Ridding Children of Common Worm Infections," *Postgraduate Medicine,* 58:115–120, 1975.

(9) Diefenbach, W. C. L., "Intestinal Parasites: Common and Becoming More So," *Consultant,* pp. 47–54, 1976.

2. *Category I labeling.* The Panel recommends the following labeling for the Category I OTC anthelmintic drug products in addition to the specific labeling discussed in the individual ingredient statements.

a. *Indications.* "For the treatment of pinworms."

b. *Warnings.* (i) "If upset stomach, diarrhea, nausea, or vomiting occurs with this medication, discontinue using it and consult a physician."

(ii) "Do not take this product if you are pregnant or ill, without first consulting a physician."

(iii) "Do not give to infants under two years of age or children who weigh less than 25 pounds without first consulting a physician."

c. *Directions.* (i) "When one individual in a household has pinworms, the entire household should be treated. Persons who are ill or pregnant, infants under two years of age, or children who weigh less than 25 pounds should not be treated without first consulting a physician."

(ii) "Take only according to directions."

(iii) "Do not exceed the recommended dosage."

(iv) "If any worms other than pinworms are present before or after treatment, consult a physician."

d. *Package insert.* The Panel recommends that each OTC anthelmintic drug product contains a consumer package insert which includes the following information.

(i) A detailed description of how to find and identify the pinworm.

(ii) A commentary on the life cycle of the pinworm.

(iii) A commentary on the ways in which pinworms may be spread from person to person and hygienic procedures to follow to avoid such spreading.

(iv) All other Category I labeling information contained in the monograph.

B. Category II Conditions

The following are Category II conditions under which drug products used as anthelmintics are not generally recognized as safe and effective or are misbranded.

1. *Category II active ingredient.* The Panel has classified piperazine citrate as not generally recognized as safe and effective for OTC use as an anthelmintic.

Piperazine citrate. The Panel concludes that piperazine citrate is effective as an anthelmintic for the treatment of pinworms but unsafe for OTC use. The Panel recommends that this drug remain available only on prescription.

(a) *Safety.* Piperazine citrate, the citrate salt of hexahydropiperazine, is widely used as a prescription drug for the treatment of the pinworm (*Enterobius vermicularis*) and the large roundworm (*Ascaris lumbricoides*).

There are many published reports of neurotoxicity characterized by confusion, somnolence, incoordination, and myoclonic or petit mal seizures in persons treated with this product. Nickey (Ref. 1) related the case of a 9-year-old girl who was well-stabilized on trimethadione for petit mal seizures. She was treated with anhydrous piperazine for pinworms and experienced "long, hard" seizures. After discontinuing the piperazine therapy and then rechallenging the patient with additional piperazine citrate, Nickey reported that seizures resumed. This case and others (Refs. 2, 3, and 4) indicate that piperazine citrate can possibly precipitate seizures in patients with neurological disorders.

Miller and Carpenter (Ref. 5) reported that neurotoxic side effects of piperazine citrate were evident in an 8-year-old boy with no history of central nervous system disease. However, the child did have compromised renal function. Thus, it is suggested by this case that transient neurotoxicity may occur in persons with renal dysfunction who are treated with piperazine.

Belloni and Rizzoni (Ref. 6) have described a case of neurotoxicity associated with the dosing of an apparently normal, healthy child. They state that in 10 of 11 patients on piperazine hydrate therapy, electroencephalographic (EEG) changes were noticed over a 5-day period. Schuch et al. (Ref. 2) cite the induction of EEG changes in 11 of 16 children with previously normal tracings.

In view of the reported risk of neurotoxicity, the Panel believes that the benefit-to-risk ratio of piperazine makes it inappropriate for general use as an OTC preparation.

(b) *Effectiveness.* The Panel believes that piperazine citrate is an effective anthelmintic when used under the direct supervision of a physician. This belief is based upon its wide usage as a prescription product for over 20 years since approval of the first new drug application for this ingredient.

(c) *Evaluation.* Based on its review of the neurotoxic side effects of piperazine citrate, the Panel concludes that piperazine citrate is not safe for OTC use and should remain a prescription drug product.

References

(1) Nickey, L. N., "Possible Precipitation of Petit Mal Seizures with Piperazine Citrate," *Journal of the American Medical Association*, 195:1069–1070, 1966.

(2) Schuch, P., U. Stephan, and G. Jacobi, "Neurotoxic Side Effects of Piperazine," *The Lancet*, 1:1218, 1966.

(3) Neff, L., "Another Severe Psychological Reaction of Side Effects of Medication in an Adolescent," *Journal of the American Medical Association*, 197:150–151, 1966.

(4) Savage, D. C. L., "Neurotoxic Effects of Piperazine," *British Medical Journal*, 2:840–841, 1967.

(5) Miller, C. G., and R. Carpenter, "Neurotoxic Side-Effects of Piperazine," *The Lancet*, 1:895–896, 1967.

(6) Belloni, C., and G. Rizzoni, "Neurotoxic Side-Effects of Piperazine," *The Lancet*, 2:369, 1967.

2. *Category II labeling.* Of the products reviewed, the Panel found no claims which are inappropriate, unreasonable, or incorrect. However, OTC anthelmintic labeling should not, in any way, suggest that anthelmintic drug products intended to treat pinworm infestations can be used successfully to treat other intestinal worms. Such information would be not only misleading, but also would present a direct, serious health hazard to the patient.

The Panel also believes that any statement suggesting the prophylactic use of anthelmintic drug products is entirely unwarranted and should not appear on any OTC anthelmintic labeling.

The agency has carefully considered the potential environmental effects of this proposal and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The agency's finding of no significant effect and the evidence supporting this finding, contained in an environmental assessment under 21 CFR 25.31 (proposed in the Federal Register of December 11, 1979; 44 FR 71742), may be seen in the Hearing Clerk's Office, Food and Drug Administration.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat 948 (21 U.S.C. 321, 352, 355, 371), and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)), and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended by adding to Part 357 a new Subpart B to read as follows:

PART 357—MISCELLANEOUS INTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart B—Anthelmintic Drug Products

Sec.

Sec.

Authority: Secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371); (5 U.S.C. 553, 554, 702, 703, 704).

Subpart B—Anthelmintic Drug Products

§ 357.101 Scope.

(a) An over-the-counter anthelmintic drug product in a form suitable for oral administration is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this subpart in addition to each of the general conditions established in § 330.1 of this chapter.

(b) References in this subpart to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 357.103 Definitions.

As used in this part:

(a) *Age.* "Infant" means a person under 2 years of age, "child" means a person 2 years to under 12 years of age, and "adult" means a person 12 years of age and older.

(b) *Anthelmintic.* An agent that is destructive to pinworms.

§ 357.110 Anthelmintic active ingredients.

The active ingredients of the product consist of the following when used within the dosage limits and dosage forms established for each ingredient:

(a) *Gentian violet* (enteric-coated tablets).

(b) *Pyrantel pamoate.*

§ 357.150 Labeling of anthelmintic drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "anthelmintic."

(b) *Indications.* The labeling of the product contains a statement of the indications under the heading "Indications" that is limited to the phrase "For the treatment of pinworms."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For products containing any ingredient identified in § 357.110.* (i) "If upset stomach, diarrhea, nausea, or vomiting occurs with this medication, discontinue using it and consult a physician."

(ii) "Do not take this product if you are pregnant or ill, without first consulting a physician."

(iii) "Do give to infants under two years of age or children who weigh less than 25 pounds, without first consulting a physician.

(2) *For products containing gentain violet identified in § 357.110(a).* "Because of the staining properties of this preparation, do not bite, chew, or suck the tablets.

(d) *Directions.* The labeling of the product contains the following statements under the heading "Directions," followed by "or as directed by a physician."

(1) *For products containing any ingredient identified in § 357.110.* (i) "When one individual in a household has pinworms, the entire household should be treated. Persons who are ill or pregnant, infants under two years of age, or children who weigh less than 25 pounds should not be treated without first consulting a physician."

(ii) "Take only according to directions."

(iii) "Do not exceed the recommended dosage."

(iv) "If any worms other than pinworms are present before of after treatment, consult a physician."

(2) *For products containing gentian violet identified in § 357.110(a).* (i) Oral dosage for adults and children is 2 milligrams/kilogram daily, divided into two or three administrations as enteric-coated tablets. Treatment continues for a complete 10-day course with a maximum of 150 milligrams/day. For infants under two years of age or children who weigh less than 25 pounds, there is no recommended dosage except under the advice and supervision of a physician.

(ii) "Tablets should be swallowed whole and taken with water."

(3) *For products containing pyrantel pamoate identified in § 357.110(b).* Oral dosage for adults and children is 11 milligrams/kilogram. The total single dose does not exceed 1 gram. For infants under two years of age and children who weigh less than 25 pounds, there is no recommended dosage except under the advice and supervision of a physician.

(e) *Other information.* The labeling of gentian violet, identified in § 357.110(a), contains the following additional information:

(1) "If vomiting occurs with this medication, the vomitus may be colored purple."

(2) "This medication will cause your stools to be colored purple. This is harmless."

§ 357.152 Package inserts for anthelmintic drug products.

The labeling of the product containing any ingredient identified in § 357.110 contains a consumer package insert which includes the following information:

(a) A detailed description of how to find and identify the pinworm.

(b) A commentary on the life cycle of the pinworm.

(c) A commentary on the ways in which pinworms may be spread from person to person and hygenic procedures to follow to avoid such spreading.

(d) All labeling information contained in the § 357.150.

Interested persons are invited to submit their comments in writing (preferably in four copies and identified with the Hearing Clerk docket number found in brackets in the heading of this document) regarding this proposal on or before December 8, 1980. Comments should be addressed to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be accompanied by a supporting memorandum or brief. Comments replying to comments may also be submitted on or before January 7, 1981. Comments may be seen in the above-named office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: August 27, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 80–27587 Filed 9–8–80; 8:45 am]

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Federal Register

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
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Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the Federal Register 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

TRANSPORTATION DEPARTMENT

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52373 8-7-80 / Income tax; investment in United States property by controlled foreign corporations

List of Public Laws

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

H.R. 507 / Pub. L. 96-335 To authorize Federal participation in stream rectification, Trinity River Division, Central Valley project, California, and for other purposes. (Sept. 4, 1980; 94 Stat. 1062) Price: $1.

S. 496 / Pub. L. 96-336 To increase the appropriations ceiling for title I of the Colorado River Basin Salinity Control Act (the Act of June 24, 1974; 88 Stat. 266), to increase the appropriations authorization for the Small Reclamation Projects Act of 1956 (70 Stat. 1044), and for other purposes. (Sept. 4, 1980; 94 Stat. 1063) Price: $1.

S.J. Res. 83 / Pub. L. 96-337 To authorize the Camp Fire Girls of Cundys Harbor, Maine, to erect a memorial in the District of Columbia. (Sept. 4, 1980; 94 Stat. 1066) Price: $1.

S. 1998 / Pub. L. 96-338 To provide for the United States to hold in trust for the Tule River Indian Tribe certain public domain lands formerly removed from the Tule River Indian Reservation. (Sept. 4, 1980; 94 Stat. 1067) Price: $1.

S. 2549 / Pub. L. 96-339 To authorize appropriations for fiscal years 1981, 1982, and 1983 for the Atlantic Tunas Convention Act of 1975, and for other purposes. (Sept. 4, 1980; 94 Stat. 1069) Price: $1.